CASE NO.: 05-985 OCT 24 2005

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES J. TITTLE
Petitioner

vs.

DOROTHY D. BOTTORFF-TITTLE, SUPERIOR COURT OF
ORANGE, COUNTY OF ORANGE, STATE OF CALIFORNIA
Respondents

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF UNITED STATES OF APPEAL FOR THE NINTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

CHARLES J. TITTLE
5922 Par Circle
Huntington Beach, California 92649
714-840-3487

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PETITIONER FOR CERTIORARI

QUESTIONS PRESENTED FOR REVIEW

1. Upon learning that federal plaintiff may have a lack of capacity, should the federal district court judge have suspended further proceedings under Federal Rules of Civil Procedure, Rule 12(b)(6)?
2. Before dismissing plaintiff's 1983 Civil Rights Complaint, should the federal district judge have allowed plaintiff to amend his initial complaint?
3. Before denying plaintiff's appeal, should the Ninth Circuit Court of Appeals also have considered appellee's attorney's admissions of his client's federal criminal conduct in California State court proceedings?
4. Should the Ninth Circuit Court of Appeals have considered the California State Court's Denial

of Petitioner's Procedural Due Process Rights?

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, petitioner states that he has no parent companies or nonwholly owned subsidiaries

TABLE OF CONTENTS

TABLE OF AUTHORITIES

OTHER CASE LAW

CONSTITUTIONAL AND STATUTORY PROVISIONS

IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

1. For the cases from **federal courts:**

   a. The denial of the United States court of appeals appears at Appendix A to the petitioner's Petition For Rehearing En Banc and is unpublished.

   b. The opinion of the United States Court of Appeals appears at Appendix B to this petition and is unpublished.

   c. The opinion of the United States district court appears at Appendix C to the petition

and is unpublished.

2. For the cases from **state courts**:

   a. The opinion of the highest state court to review the merits merely denied petitioner and is unpublished.

   b. The opinion of the Court of Appeals for the Fourth District, Division Three appears at Appendix D to petition and is unpublished.

JURISDICTION

The court of appeal's judgment was entered on May 16, 2005. A timely petition for rehearing was denied on July 25, 2005. The jurisdiction of this Court is invoked under 28 U.S.C., section 1254(1).

In unpublished opinion the Ninth Circuit dismissed with prejudice petitioner's 1983 Civil Rights Action, Tittle v. Bottorff-Tittle et al, 131 Fed Appx 555 (9th Cir. 2005).

Prior to the above opinion, the federal district granted a dismissal of petitioner's complaint pursuant to Federal Rules of Civil Procedure, Rule 12 (b)(6). A dismissal on a failure to state a claim operates as an adjudication on the merits, NAACO v. Hunt, 891 F.2d 1555, 1560 (11th Cir. 1990).

The granting of a motion to dismiss, is a question of law wherein review plenary granted, New Valley Corporation v. United States, 119 F.3d 1576, 1580 (Fed. Cir. 1997).

Congress has provided under 28 U.S.C., section 1254 that the United States Supreme Court may review cases by Writ Of Certiorari cases in federal court by petition of any party.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED.

a. Federal Violation In State Courts

The initial constitutional question, as set forth in petitioner's 1983 complaint was that during petitioner's divorce proceedings, petitioner was suffering from clinical depression and was under continuous psychiatric care at local hospitals.

Petitioner claims that while he was in the state court, he was continuously denied a fair hearing under the Fourteenth Amendment of the constitution.

Also, during said divorce, and subsequently during a state civil action, the petitioner repeatedly informed the state trial and appellate courts that while under continuous psychiatric care, the defendant

Dorothy Bottorff-Tittle and her attorney intercepted, misdirected and opened plaintiff's United States Mail in violation misdirected, 18 U.S.C. sections 1702 and 1708; 39 CFR section 233.1 et seq., 39 CFR section 946.1 et seq., and United States v. Brown (1970) 425 F.2d 1172, 1173-1174 and attempted to gain control of the contents of plaintiff's workers compensation checks in approximate amount of $10,000.00. Latter, in Dorothy D. Bottorff-Tittle appellee's answering brief in the Ninth Circuit, appellee's attorney Paul N. Jacobs admitted that during the state divorce proceeding , his client was instrumental in intercepting the petitioner's United States mail. This was a clear admission as set forth in Federal Rules of Evidence, Rule 801(d)(2)(C) or (D); and

4 Saltzburg, Stephen A., et al., Federal Rules of Evidence Manual, section 801.02[6][f][vi], (Lexis-Nexis 2002).

Under the Supremacy Clause of the Federal Constitution, the State of California was without discretion in enforcing federal criminal statutes, Second Employers' Liability Cases, 223 U.S. 1, 58, 56 Led 327, 32 S.Ct. 169 (1991); Miller v. Municipal Court (1943) 22 Cal. 2d 818, 850-851 and Gibson v. Berryhill, 411 U.S. 564, 575-579, 93 S.Ct. 1689, 36 LEd 2d 488, 93 S.Ct. S.Ct. 1689.

Appellee, State of California, Orange County, and Superior Court of California has repeatedly refused to act in this matter and there by shown their indifference to federal penal statutes.

b. Violation of Federal Constitutional Rules In Federal Court.

During defendant's oral hearing on the 12(b)(6) motion to dismiss, petitioner's former attorney informed the district court judge that petitioner was under continuous psychiatric care at a local veterans hospital, and that some of these medical records were pending in a federal district court case.

Again, the petitioner was further denied his Procedural Due Process hearing rights under the Fourteenth Amendment and the Federal Rules of Civil Procedure, Rule 17(b)(c); and United States v. 30.64 Acres of Land, 795 F.2d 796, 804-806.

STATEMENT

A. Petitioner's History of Defendant's Denial of Procedural Due Process In California State Courts. California Civil Procedure Code, section 372 and 373 were passed by the state legislature in 1872.

Beginning in 2001, the California appellate court inferred that Due Process was required before a guardian ad litem was appointed, In re Sara D. (2001) 87 Cal.App. 4th 661, 667-671, 104 Cal.App. 2d 909; In re Jessica G. (2001) 93 Cal.App. 4th 1180, 1187-1188, 113 Cal.Rptr 2d 714, and In re Joann E. (2002) 104 Cal.App. 4th 347, 354-361, 128 Cal.App. 2d 189.

Prior to the above cases, the California Supreme Court also inferred that it was the duty to protect an incompetent person on appeal, Guardianship of Walters (1951) 37 Cal. 2d 239, 243-244, 231 P.2d

473.

On or about February 1996, the California Worker's Compensation Board law judge awarded the petitioner disabilities benefit based in part of certain mental disabilities. The listed disability included clinical depression. Clinical depression is a bases for incompetency, California Probate Code, section 811 (a)(D)(4) (APPENDIX D, pages 8-10).

On or about January 6 1996, the petitioner initially filed for Federal Social Security Disability Benefits. Part of his Social Security disability claim is for clinical depression. On or about December 1, 1994, the petitioner's former wife filed for divorce in orange County Superior Court. During these proceedings and while petitioner was living apart,

petitioner's United States mail, which included his workers's compensation checks, was intercepted and petition believes opened by his former wife and her attorney. Petitioner's former wife and her attorney attempted to make these checks a part of his divorce proceedings.

During the divorce proceedings, petitioner and his former wife entered into a land sales contract on Arkansas real property. This contract specifically states Arkansas law would govern this contract. An unresolved party to this written agreement was the Arkansas real estate broker.

In all of the State of California court proceedings, the California court were informed that the petitioner was suffering from questionable mental

state, yet no action was ever taking to provide for a competency hearing as to a guardian ad litem, California Civil Procedure Code, section 373(c); and In re Daniel S. (2004) 115 Cal.App. 4th 903, 912, 9 Cal. Rptr. 3d 646.

Again, a determination of competency is a question for the court or jury after a fair hearing, Walton v. Bank of California (1963) 218 Cal.App. 2d 527, 541, 32 Cal.Rptr. 856.

In petitioner's California Fourth Appellate Opening Brief and Reply Brief petitioner again raised his denial of Procedural Due Process Rights hearing as provided under California Civil Procedure Code, section 373(c) and under the Fourteenth Amendment. In California, the general rule is that a constitutional

question must be raised at the earliest opportunity or it will be considered waived, Geftakys v. State Personnel Board (1982) 138 Cal.App. 3d 844, 864, 188 Cal.Rptr 305.

At no time did the state appellate courts rule on petitioner's constitutional claims of denial of Procedural Due Process Rights (APPENDIX D).

B. Petitioner's Federal Civil Rights Complaint.

A 1983 Civil Rights claim for relief merely requires that the pleader state (i) a violation of his or her protected rights under federal statute or regulation (2) the proximate causes of plaintiff's alleged injuries (3) the conduct was done by a person, (4) who acted under color of law, statute ordinance, regulation,

custom or usage of any State, Territory or District of Columbia, and where a municipality is named (5) the violation of plaintiff's federal rights was the result of the enforcement of a municipal policy or practice, Collins v. Harker Hights-Texas, 503, U.S. 115, 119-127, 117 L.Ed 2d 261, 112 S.Ct 1061 (1992).

At least one opinion has stated that a civil rights complaint should not be dismissed for failure to state a claim unless the complaint appears beyond doubt that plaintiff can prove any set of facts in support of his or her claim, Conley v. Gibson, 335 U.S. 41, 45-46, 2 L.Ed 2d 80, 78 S.Ct. 99 (1957).

Merely attaching a copy of the state appellate opinion to a Civil Rights action will not invoke Rooker-Feldman doctrine and thereby defeat the Civil

Rights claim, Nesses v. Shepard, 68 F.3d 1003, 1005 (7th Cir. 1995); and Brokaw v. Weaver, 305 F.3d 660, 664-665 (7th Cir. 2002).

C. The Rooker-Feldman Doctrine Does Not Apply Because The State Appellate Judgment Did Not Consider Petitioner's Constitutional Claims.

The Court has long since accepted that a denial of state Procedural Due Process Rights will give rise to a Civil Rights claim, Zinerman v. Burch 494 U.S. 833, 840, 140 L.Ed 2d 1043, 118 S.Ct. 1708.

In Zinerman v. Burch, the Court also reasoned that the constitutional, violation, or violations, actionable under Section 1983 is not complete until the State fails to provide the Procedural Due Process

sought, Zinerman v. Burch, at 126.

The procedure does not manifest until after the state judgment is final. If the Ninth Circuit claim of intertwining would trigger the Rooker-Feldman Doctrine nearly all procedural due process violations under the Fourteenth Amendment would be barred, Briggs v. City of Rolling Hills Estates (1995) 40 Cal.App. 4th 637, 646-648, 47 Cal.Rptr. 2d 29. Rooker-Feldman Doctrine depends weather a state court action is inextricably intertwined with a claim raised in federal court, as would bar federal review under Rooker-Feldman Doctrine, hinges on whether the federal claim alleges that the injury caused by a lower court judgment or alternatively is based upon the lower courts failure to properly address or fails to

address alleged independent clause in a action which state court failed to remedy, like the theft of his United State Mail to grain control of it contents, Truserv Corp. v. Flegles, Inc. 419 F.3d 584, 585(Note 10) (7th Cir. 2005). The Truserv Corp. case show that the 7th Cir. Has all together different point of view of the Rooker-Feldman Doctrine, then the 9th Cir.. The parties Mr. Tittle and Ms Bottorff-Tittle can change personal jurisdiction as they did in the real estate contract under Arkansas law, see Trserv Corp. case below.

The case of Truserv Corp. v. Flegles, Inc. 419 F.3d 584, 585 (7th. Cir. 2005) states the following in jurisdiction:

__ "personal jurisdiction is waivable and

that parties can, through forum selection clauses and the like, easily contract around any rule we promulgate".

The United States case states that parties may stipulate to another jurisdiction in their contract as they did in the Arkansas real estate contract, by which they stipulated to use Arkansas state law, Burger King Corp. v. Rudzewicz, 471 USD at 472n14 (1985), 85 Le2d 528, 105 S.Ct. 2174.

D. The Rooker-Feldman Doctrine Should Not Apply To Petitioner's 1983 Civil Rights Actions Where The State Courts Failed To Provide A State Ruling On Federal Constitutional Questions.

In petitioner's federal Civil Rights actions,

petitioner is not requesting the federal court to review the California Fourth Appellate District's unpublished Opinion.

Petitioner merely raised those Constitutional issues that were procedural in nature and not ruled upon by the state courts.

The Ninth Circuit and the Tenth Circuit has a long standing policy that when the state plaintiff has been denied a meaningful opportunity to litigate constitutional violations in state courts, the federal plaintiff may raise these federal constitutional challenges in federal district courts, Robinson v. Anyaski, 753 F.2d 1468, 1468, 1472-1473 (9th Cir. 1995) violated on other grounds, 477 U.S. 902, 91 Led 2d 560, 106 S.ct. 3265; and Merrill Lynch

Business Financial Service, Inc. v. Nudell, 363 F.3d 1072, 1075-1076 (10th Cir. 2004).

This case also is about denial of Procedural Due Process by the state. In the state courts opinion there is a question of denial of due process as that stated in Lujan v. G & G Fire Sprinklers, Inc. 532 US 189, 195 (2001), the case states as follows:

> Where a state law such as this is challenged on due process grounds, we inquire whether the State has deprived the claimed of a protected property interest, and whether the State's procedures comport with due process. ---. ("[T]he Due Process Clause grants the aggrieved party the opportunity to present his case

and have its merits fairly judged").

WHY THIS PETITION FOR WRIT OF CERTIORARI SHOULD BE GRANTED

There continues to be a ever widening conflict between the decisions of the federal courts of appeal on the application of the Rooker-Feldman doctrine with violations of Procedural Due Process in state courts, Robinson v. Ariyoshi, 753 F.2d 1468, 1472-1473 (9th Cir. 1995); Bianchi v. Rylaarsdam, 334 F.3d 895, 898 (9th Cir. 2003), and Catz v. Chalker, 142 F.3d 279, 290-295 (6th Cir. 1998).

In Civil Rights claims, the court has accepted claims based upon a denial of Procedural Due Process, Zinerman v. Burch, at 127-139.

Still another conflict exists on the application of

Rules 17(b) and (c), of the Federal Rules of Civil Procedure. Rule 17(b) and (c) sets the standard for the application of guardian ad litem in federal courts. Some circuits require a filing of a formal motion and other circuits allow a sua sponte inquiry, Ferrelli v. River Manor Health Care Center, 323 F.3d 196, 201-202 (2nd Cir. 2003); and United States v. 30.64 Acres of Land, 795 F.2d 796, 805 (9th Cir. 1986).

Finally, there remains an existing conflict as to the application of Rule 12(b)(6) motion. Petitioner was not allowed to amend his Civil Rights claim before it was formally dismissed. The general rule is in Civil Rights claim, the claim or claims should not be dismissed unless it appears beyond a doubt that the federal plaintiff cannot prove any set of facts in

support of his or her claim, Conley v. Gibson at 45-46.

Some Federal Courts of Appeal indicate that leave must be granted unless the dismissing court has "substantial reason" to deny, Rolf v. City of San Antonio, 77 F.3d 832, 828 (5th Cir. 1996).

Again, in petitioner's case, he was not ever granted leave to amend.

A. The Decision below Is Incorrect.

In petitioner's Ninth Circuit case, the reasoning was not sound. The court below was in conflict with its own Ninth Circuit cases as to its application of the Rooker-Feldman doctrine. There was no lack of subject matter jurisdiction.

E. IN ALL THE COURT DECISION, HEARINGS

AND DISCOVERY DID THE COURT ALLOW EXPERT WITNESSES FOR APPELLANT CHARLES TITTLE BE HEARD OR A TRIAL ON THE MERIT OF THE CASE TAKE PLACE. ESPECIALLY IN THE APPELLANT'S MENTAL STATE.

At no time in the State court proceedings was the petitioner (appellant /petitioner Charles) afforded an opportunity to be examined by a medical doctor to determine his mental state. But, in the state appellate court decision, (See state appellate decision, there was no medical examinations).

Issues preclusion only applies where:

(1) the issue in question was actually and necessary decided in the prior proceeding,

and

(2) the party against whom [issue preclusion] is asserted had a full and fair opportunity to litigate the issue in the first proceedings [citation]

Hoblock v. Albany County Board of Elections 442 F.23 77, 92-95 (2nd Cir. 2005).

In the state appellate decision, they state sufficient evidence to have a hearing on incompetency and refused to follow the law.

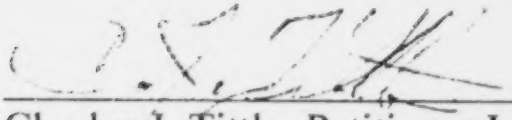
CONCLUSION

This Court should review this case because the undermining of the Government "dispute" process

and potential between federal agencies, which the decision below makes possible, is a matter of substantial public importance and concern. For these reasons, it is respectfully submitted that this petition for a writ of certiorari should be granted and allow petitioner to file an Opening Brief.

Dated: December 17, 2005

Respectfully submitted



Charles J. Tittle, Petitioner In Pro Se

LIST OF PARTIES IN COURT BELOW

1. CHARLES J. TITTLE, Petitioner, In Pro Se

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   Huntington Beach, California 92649

   714-840-3487

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UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES J. TITTLE

Plaintiff-Appellant,

V.

DOROTHY D. BOTTORFF-TITTLE ; et al

Defendant-Appellees,

No. 04-56273
D.C. # CV-04-00521-CJC
Central District
District of California

ORDER

Before: PREGERSON, CANBY AND THOMAS, Circuit Judges.

The panel has voted to deny the petition for panel rehearing.

The full court has been advised of the petition

for rehearing en banc and no judge has requested a vote on weather to rehear the matter en banc. See Fed. R. App. P. 35.

The petition for panel rehearing and the rehearing en banc are denied.

No further fillings will be accepted in this closed case.

B

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

CHARLES J. TITTLE

Plaintiff-Appellant,

V.

DOROTHY D. BOTTORFF-TITTLE ; et al

Defendant-Appellees,

No. 04-56273
D.C. # CV-04-00521-CJC
Central District
District of California

MEMORANDUM*

Appeal from the United States District Court for the Central District of California Cormac J. Carney, District Judge, Presiding

Submitted May 9, 2005**

Before: PREGERSON, CANBY AND

THOMAS, Circuit Judges.

Charles J. Tittle appeals pro se the district court's dismissal with prejudice for lack of subject matter jurisdiction under the Rooker-Feldman doctrine of his

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* This disposition is not appropriate for publication and may not be cited to or by the courts of this circuit except as provided by Ninth Circuit Rule 36-3.

** This panel unanimously finds this case suitable for decision without oral arguments. See Fed. R. App. P. 34(a)(2).

§ 1983 civil rights action against his former wife Dorothy, the Superior Court of Orange County, Orange County, and the State of California, arising from their divorce proceedings in state court. We have jurisdiction pursuant to 28 U.S.C. § 1291, and we review de novo a dismissal for lack of subject matter jurisdiction, see Bianchi v. Rylaarsdam, 334 F.3d 895, 898 (9th Cir. 2003). We affirm.

We conclude that the claims raised by Tittle in his § 1983 action are "inextricably intertwined" with the state court decision rendered in relation to the Tittle's marriage dissolution proceedings such that the adjudication of the federal claims would undercut those state court rulings. Id. (Noting that Rooker-Feldman "prevents federal courts from

second-guessing state court decision").

Accordingly, the district court properly dismissed the complaint for lack of subject matter jurisdiction. See Exxon Mobil Corp. v. Saudi Basic Indus. Corp., 125 S Ct. 1517, 1521-22 (2005) (holding that Rooker-Feldman applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court's proceedings commenced and inviting district court review and rejection of those judgments").

All pending motions and requests are denied as moot.

AFFIRMED.

J

NOT TO BE PUBLISHED IN OFFICIAL

REPORTS

IN THE COURT OF APPEAL OF THE STATE

OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION THREE

CHARLES J. TITTLE

Plaintiff-Appellant,

V.

DOROTHY D. BOTTORFF-TITTLE ; et al

Defendants-Appellees,

G030715

(Super. Ct. No. 807533)

OPINION

Appeal from a judgment of the Superior Court of Orange County, William M. Monroe, Judge. Affirmed. Sanction request by respondent remanded with directions.

Stephen W. Johnson for Plaintiff and Appellant.

Jacobs & Dodds, Paul N. Jacobs and Debra A. Dodds for Defendant and Respondent.

* * *

Charles and Dorothy were divorced in 1997.[1] One of the items of community property was a marina in Arkansas. The judgment ordered that the property be sold and the proceeds divided equally, subject to few provisions: Dorothy had contributed $12,000.00 of her separate property to the acquisition of the marina, so she was to receive that money back. Further, the court found that Charles had "poorly managed" the property, and therefore any adverse tax consequence as a result of 1995 and 1996 tax returns were to be borne solely by him. Thus the judgment provided that Charles would indemnify Dorothy and

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1. We mean no disrespect by use of first names, which is now the common practice of the appellate courts to avoid confusion in domestic cases. (E.g., In re Marriage of Cherition (2001) 92 Cal.App. 4th 269, 280, fn 1). In fact, litigation designations in a domestic context, such as "appellant" and "respondent", are a position inconvenience to readers who must perform quick mental translation every time one of those terms is used.

hold harmless from all liability "therefrom"[2].

The problem was that the marina was only listed for sale at the time of the 1997 judgment. It had not been sold yet. At the time Charles was living there rent-free and he wanted to try to buy Dorothy out. However, there was also a $40,00.00 cash offer outstanding from a third party. Dorothy felt at a disadvantage in terms of the management of property; Charles was on site and Dorothy had no confidences in his ability to take care of the property. (According to one of Dorothy's declarations in the record, when bad weather had caused one secondary dock of the marina to break away from the shoreline, Charles'

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2. The judgment also provided that the court would "retain jurisdiction" over the marina. That was inaccurate drafting by Dorothy's lawyer, who wrote the judgment for the court. In reality the judgment should have said that the court retained jurisdiction over the issue of the disposition of the property.

idea of fixing it was simply to tie it to the shoreline.) So in December 1997 Dorothy agreed to deal, memorialized in form real estate sales contract, whereby Charles would buy her out for $40,000.00, with her receiving $26,000.00 ($12,000.00 more than Charles would receive if a third party bought the property and the proceeds wee divided pursuant to the terms of judgment of dissolution). Payment was required by February 1, 1998.

However, the deal broke down and was never consummated because the parties fell into wrangling over whether Dorothy should assume any liabilities associate

with the marina. Essentially, Charles wanted the marina free and clear. Perhaps the best analogy is to a divorce settlement where one spouse is willing to walk away if paid a certain amount of money without the worry of any tax liabilities. In more specific terms, Charles wanted to be able to sue Dorothy for any liabilities he might encounter as new sole owner of the marina. (For example, it appears he wanted to sue Dorothy for certain purchases made on a Sam's Club credit card in the marina' name.)

Since there was still an outstanding offer by outsider to buy the marina for $40,000.00, Dorothy filed an OSC to force the sale to them. The hearing on the OSC was held April 14, 1998.

The OSC resulted in a handwritten stipulation and order (using the usual court form), in which

Dorothy would receive only $20,000.00 for her interest. Then again, Charles agreed to waive all spousal arrearages Dorothy might have owned him. Dorothy was also to receive $1,000.00 for attorney fees.

A week later, Dorothy's counsel finalized the stipulation. The lawyer, however, introduced a small change into the wording. Where the original handwritten stipulation had said that Charles "waives costs of said property repairs to property here", the typewritten stipulation said that Charles "waives all costs of the repairs to the Jackson Port, Arkansas property, and shall hold [Dorothy] harmless from same".

Did the small word change a substantive difference? Charles thought it did, at least enough so

to file, in May 1998, a formal objection to the new language. (Charles also objected to the "and shall hold [Dorothy] harmless from same" language in a clause where he waived all spoual arrearages that may be due him.)

Judge Carla Singer, however, apparently did not. On June 17, 1998, she specifically denied Charles' objection. The typewritten findings and order after hearing were then filed June 18, 1998. Charles subsequently paid the money and the deal went through; he became sole owner of the marina.

More than nine months later, on March 31, 1999, Charles filed this separate civil action against Dorothy for have backed out of the buy-out deal of December 1997. He followed his original complaint with a first amended complaint in late April 1999.

That summer, Charles resumed his activities on the family law court front with a motion to vacate the findings and order after hearing of June 18, 1998. That motion was denied in a written statement of decision signed by Judge Myron Brown[3]. Judge

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3. The original Judgment was supervised by Judge Nancy Pollard. The stipulation concerning the marina in Arkansas was supervised by Judge Carla Singer. Judge Myron Brown handled the attempt to vacate the findings and order after hearing signed by Judge Singer. Then Judge William Monroe got stuck with the civil case which was spawned from the family law case. This is the sort of nonsense that happens when problematic family law cases are passed from Judge to judge; no one Judge is ever able to detect that one party is abusing the system, (See, e.g.., Bidna the Rosen 1993) 19 Cal.App.4th 27, 38[to prevent one side trying to wear down the other, "we strongly emphasize the importance of extending single-judge calendaring to family law courts as soon as resources permit"].)

Brown gave no less than four independent reasons to deny the motion; Charles was too late. His motion was untimely under section 473 of the Code of Civil Procedure. The actual text of the finding and order of June 18, 1998 "substantially compli[ed]" with the handwritten stipulation. And there was no just cause to change or correct that order.

Judge Brown's family law court order was signed and dated December 17, 1999. That very day Charles filed a second amended complaint. The theory of that complaint was not so much that Dorothy had breach the buy-out contract, but that the June 18, 1998 order had to be set aside so that Charles could pursue a breach of contract against Dorothy, and the order had unjustly deprived him of that right. (Though the complaint also had breach of contract

action.)

After much discovery, Dorothy brought a summary judgment motion which was granted in early March 2002. Despite the fact the case had become, im judge Monroe's words, Charles' "consuming passion," Judge Monroe granted the motion. By late March there was a Judgment on file from which Charles has now brought this appeal[4]

4. As regards Charles' motions to take judicial notice: The motion is granted as to Charles exhibits in opposition to motion for summary judgment it is denied as to certain videotapes of hearing in family law court, as the trial court was not in any way provided with those videotapes.

II

A

The word "vexation" or some variant of it appears in the same paragraph with the legal doctrine "re judicata" in no less than 100 cases in the official reports. This is, one of the major reasons for the doctrine of re judicata is to prevent the vexation of repeated litigation over the same material. (See 7 Witken, Cal. Procedure (4th ed. 1997) Judgment, ¶280, p.820.)

Literally, res judicata is Latin for "a thing adjudicated." (Black's Law Dict. (7th ed. 1999) at p. 1312.) The point is, once the thing has been adjudicated, it is a waste of public resources and oppressive to the other side (the "vexation" part of the doctrine) to allow it be adjudicata again. Not

surprisingly, res judicata in the civil law is sometimes compared to the double jeopardy doctrine in the criminal law. (E.g., People v. Barragan (2004) 32 Cal. 4th 236, ___, 9 Cal.Rptr. 3d 76, 92 [noting overlap in purposes served by res judicata and double jeopady].) A litigation his consuming passion, "wear down an opposing party with repeated attempts to litigate the same "thing."

Our Supreme Court's most recent exploration of the subject, Mycogen Corp. v. Monsanto Co. (2002) 28 Cal. 4th 888, provides this clear operational description; "Res judicata' describes the preclusive effect of a final judgment on the merits. Res judicata, or claim preclusion, prevents relitigation of the same cause of action in a second suit between the same parties or parties in privity with them ... under the

doctrine of res judicata, if plaintiff prevails in an action, the cause is merged into the judgment and may not be asserted in a subsequent law suit; a judgment for the defendant serves as a bar to further litigation of the same cause of action." (Id. at pp. 896-897.)

At this point we should be careful not to confuse remedies with causes of action. Setting aside a judgment, for example, is a remedy. Vindicating a right to performance under a contract is a cause of action.

To define cause of action, California courts have traditionally used a " primary right theory." The accepted definition of a "primary right" is the plaintiff's

right to be free from the particular injury suffered."'

(See Mycogen, p.904, quoting Crowley v. Katlerman

(1994) 8 Cal. 4th 666, 681-682.)[5]

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5. As professor Heiser has shown, the primary right theory is an anchronistic anomaly in California procedural law. (See Walter W. Heiser, California's Unpredictable Res Judicata (claim Preclusion) Doctrine (1998) 35 San Diego L. Rev. 559) The problem is that in the late 19th century, joinder rules prevented the joining of general categories of claims. For example, the original version of former section 427 of the Code of Civil Procedure divided all claims into seven specific categories, and did not allow the joining of separate categories of claims in the same complaint. Given such rules, it was natural for our Supreme Court in the latter half of the 1800's to adopt the "primary rights theory" of Professor John Norton Pomeroy, who saw primary rights in term of various kinds of injuries suffered, such as injury to one's person, injury to one's property, injury to one's reputation, etc, (See id. at pp. 571-577.) But with repeal of former section 427 in 1972 and its replacement with a more modern transactional analysis test for joinder issues as exemplified in current section 428.10, subdivision (b) of the Code of Civil Procedure, California courts did not make the adjustment, and continued to pay homage to the primary right test in the res judicata contest. The matter is academic for purpose of this case, though, because the primary right test is the one more favorable to the plaintiff, and Charles' suit cannot even survive under it, much less the alternative transactional analysis test. While at least one California appellate opinion has tried to insinuate the transactional analysis test into our common law (see Nakash v. Superior Court (1988) 196 Cal.App.3d 59, 68 [dicta to the effect that "Analysis has shifted from identification of primary right upon which only one claim is allowed to determination of the existence of transaction involving a nucleus of facts upon which only one claim is allowed"]), that effort has showed remarkably little traction in subsequent Supreme Court decision, such

as Mycogen.

So let us ask the obvious question; What injuries does the complaint assert that Charles' suffered?

With regard to the breach of contract claim, we must parse things far finely. Preliminarily, as a matter of substantive contract law, it is clear that the April 1998 handwritten stipulation operated as a novation, extinguishing any obligation which Dorothy had to perform under the old December 1997 contract. (See Hiett v. Gassen (1919) 41 Cal.App. 620 [cancellation of real estate contract and buyer given option to purchase part of premises covered by old contract was novation, extinguishing seller's obligation under old contract].)

However, let us grant Charles' assumption that some right to sue Dorothy for some of the December 1997 deal might have survived the April 1998 stipulation. If the loss of a right to sue is the injury, then the loss of Charles' right to sue Dorothy was most certainly litigated in the family court, twice in fact: Once in Judge Singer's June 17, 1998 rejection of Charles' objections to the formal order, and again in Judge Brown's December 17, 1999 decision rejecting Charles' attempt to vacate the June

18, 1998 order. So if any hypothetically surviving breach of contract claim is clearly precluded by res judicata.

That leaves only (to draw perhaps a finer distinction) the injury to Charles from the fact that the findings and order of June 18, 1998 precluded him from a breach of contract claim by its hold harmless language. But that is not really a cause of action at all. It boils down, to deconstruct it properly, into the idea that one has a primary right to vindicate the loss of a previous primary right in some judicial proceedings, which is ridiculous on its face -- it's kind of infinite regression sealed off from any idea of res judicata, i.e. one can always just keep litigating one's last loss.

And yet, even if we grant the assumption that it

is a cause of action, that right was thoroughly litigated in front of Judge Brown in Charles' failed attempt to set aside the June 18, 1998 order. To reiterate, it is precluded by res judicata.

In sum, to the degree that Charles might have been unfairly deprived of some hypothetical right to sue Dorothy based on liabilities associated with the marina by virtue of the April 1998 stipulation and the June 1998 formal order, that right was litigated in the process of Judge Singer's consideration of Charles' June 1998 objections and Judge Brown's consideration of the motion to vacate. Indeed, there is nothing at issue in Charles' present lawsuit -- certainly no categorical species of harm to Charles -- that was not the subject of a claim litigated no less that twice in the divorce suit.

Charles argues that his lawsuit is not precluded by res judicata because a family law motion is not an "action" as defined in section 22 of the Code of Civil Procedure.

There are two refutation to this point. First, "action" as defined in section 22, by its terms, is not talking about primary rights for sake of res judicata, but is merely the description of the judicial process by which causes "of action" are processed. The actual text of section 22 (not quoted in the reply brief) is: "An action is an ordinary proceeding in court of justice by which one party prosecutes another for the declaration, enforcement, or protection of a right, the redress or prevention of a wrong, or the punishment of a public offense." (Emphasis added.) By its terms, family law motions

are "actions." (See Lester v. Lennane (2000) 84 Cal.App.4th 536, 559 [observing that family law child custody proceedings are actions within the meaning of section 22].)

Second, a cause of action, as our Supreme Court has defined it for purposes of res judicata (i.e., under Mycogen, a right to be free from an injury) can most certainly include rights litigated under the family law act, including the right to own one-half the community property, including marinas in Arkansas.

Charles next argument is that res judicata does not attach to proceedings where only "declarations and law" are offered. That argument, as framed, is about as wrong as it is possible to be. It would mean, for example, that there would be no res judicata effect to cases decided on summary judgement motions

based only on "declarations and law." The two cases he cites for the proposition, say no such thing. Estudillo v. Security Loan & Trust Co. (1906) 149 Cal. 556 and Jeffords v. Young (1928) 98 Cal.App. 400 are both extrinsic fraud cases, and of course res judicata is not a bar to extrinsic fraud claim. But Charles has shown no fact indicating extrinic fraud in the case.[6]

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[6] Indeed, we might add Rubenstein v. Rubenstein (2000) 81 Cal.App. 4th 1131 ito the cases standing for the proposition that res judicata does not preclude extrinsic fraud claims. (See id. at p. 1152.) And in doing so, we must point out that, as Rubenstein also makes clear, the appropriate (and statutorily authorized) course of action in the case of extrinsic fraud in family law orders and judgements is a proceeding in family court under Family Code section 2122 to set aside the judgement. (See id at p. 1146; see also kuehn v. kuehn (2000) 85 Cal.App.4th 824, 834 [even remedy for concealment of community assets in dissolution action is not a separate civil tort claim, but a family court set aside motion].) In this case the set-aside- route has already been tried by Charles, and it was rejected by Judge Brown in December 1999. So we are back to the bar of res judicata.

B

The closest thing that Charles does come to makeing an extrinsic fraud claim is something that resembles an incompetency argument based on his suffering clinical depression. (See e.g., Olivera v. Grace (1942) 19 Cal.2d 570 [decedent sustained head injury resulting in a"a complete loss of mentality"; action ot set aside default judgement against the decdent allowed].)

The proposition runs his briefs that it was somehow Dorothy's duty to bring to the family law court's attention that he was suffering from severe

depression, was being treated for that depression at the time, and might not have been, to quote lear, in his perfect mind.

This case is a far cry from Olivera, where a head injury resulted in loss of all "mentality". (See Olivera, supra, 19 Cal. 2d at p.572.) Individuals suffering severe depression, and with far more to be depressed about than Charles has experienced on this record, subject to constant and agonizing pain, have been held to be legally competent to make more import decision than whether to give up the right to keep on suing one's ex-wife over matters collateral to the disposition of a single community assert in a divorce case. (See Bartling v. Superior Court (1984) 163 Cal.App. 3d 186, 189-193.) Indeed, the facts of the bartling case demonstrate the high threshold for legal incompetency

that courts must necessary uphold, lest nothing ever be final; A man with history of ehronic acute depression and anxiety checked himself into a hospital, where it was discovered he had a maligant tumor of the ling. A biopsy resulted in the collapse of his lung. Because he was suffering from emphysema, efforts re-inflate his lung failed. He was put on respirator and eventually placed in soft restraints to prevent him from removing it. (See id. At pp. 189-190.) Despite such a miserable existence and his history of depression, the appellate court had no trouble reaching the conclusion that he was legally competent to request that he be taken off respirator. (See id. At p. 193.)

Thankfully there is nothing of those sorts of facts in Charles' incompetency claim, even if we

credit all the evidence submitted in opposition to the summary judgment motion and the motion for new trial. We need only add that the evidence he submitted in opposition to the summary judgment motion -- the declaration of a nurse friend -- was certainly not sufficient to establish legal incompetency. All it showed is that Charles has been treated for depression over the years of his divorce. Ditto the evidence support the new trial motion. That was basically a May 1997 unauthenticated report by a psychiatrist engaged in a workers' compensation claim. That report hardly shows legal incompetence. Indeed, while it speaks of depression and anxiety, depression is conspicuosly missing in the disgnosis, "Anxiety disorder not otherwise specified". Most of his impairment were rated only slight to moderate.

There

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is nothing of the order that would approach the conditions in the Bartling case. And since the standard of review on new trial motion is abuse of discretion (unlike the first time around on summary judgment motion when the court must precisely right). Judge Monroe was on even stronger ground to deny the new trial motion than he was to grant the summary judgment motion.

Moreover, it is an idea devoutly to be opposed that a spouse in divorce case has some sort of duty to call the other spouse's supposed incompetency to the attention of the court, particularly when that incompetency is based on claim of depression or anxiety. Many people suffer anxiety or depression during divorce. If Charles' idea were to take hold in the law, nothing in our family law court would ever be

final. The trial judge here was very correct indeed to require substantial evidence of legal incompetency, not merely evidence of treatment for depression or anxiety.

C

independently of classic res judicata, Charles cannot sue Dorothy in civil court for what is, in its essence, nothing more than claims congnizable under Family Law Act. Neal v. Superior Court (2001) 90 Cal.App. 4th 22, 25, and D'Elia v. D'Elia (1997) 58 Cal.App. 4th 415, 419-422, are on point. In Neal, a man sued his ex-wife for breach of contract for not complying with the terms of the family law judgment. In D'Elia woman sued her ex-hush=band for securities fraud based on statements he made to her in the course of the dissolution proceeding. In the

present case, we have a man suing his ex-wife for false promises made in the course of an attempted settlement of a family law case, directly involving the disposition of community property, and subsequently litigated in the family law courts. In each case, the substance of the claims was an attempt to assert a right in civil litigation that the subject of a previous or concurrent family law proceeding.

D

So the judgment is clearly correct and must be affirmed. The other orders appealed from (the denial of a new trial motion, the denial of a motion to tax costs and the denial of motion to correct judgment) are correct as well, and also affirmed.

That leaves a motion for sanctions for a frivolous appeal, brought by Dorothy. On this point a little perspective is helpful: From the record before us, for the past five or so years, Charles has forced Dorothy to incur great legal expense in a civil case which is about nothing more that some ill-defined minor matter collateral to the disposition of one item community property in a divorce case.

We have seen this kind of case before (and no doubt every other appellate court in the state has as well). An ex-spouse with a word processor, apparently nothing else to do, and self-taught legal training to file pleadings and send discovery requests on the other ex-spouse immense legal expenses in pursuant of some matter that was settled in the divorce case. It is almost as if the one spouse does not want to

accept the fact of the divorce and wants to maintain some sort of relationship with his or her ex by litigating.

So sanctions are most asuredly in order. Charles shall be sanctioned. However, rather than determine the amount of sanctions ourselves now -- which are to include sanction for both the trial level and this appeal -- we will follow the precedents set in Askew v. Askew (1994) 22 Cal.App. 4th 942, 966-967, and Neal, supra, 90 Cal.App. 4th at page 27 and remand to the family law court the issue of the amount that Charles should justly pay for, as we put it in Neal, having dragged Dorothy "through this unnecessary excursion in the civil court" -- and again, at both the trial and appellate levels.

WE CONCUR: SILLS, P.J. MOORE, FYBEL, J.

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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

Case No. SACV 04-0521 CJC (Anx)

Date June 28, 2004

Title CHARLES J. TITTLE v DOROTHY D. BOTTORFF-TITTLE, et al

PRESENT

HONORABLE CORMAC J. CARNEY, UNITED STATES DISTRICT COURT JUDGE

Debra Beard	N/A
Deputy Clerk	Court Reporter

ATTORNEY PRESENT FOR PLAINTIFF

N/A

ATTORNEY PRESENT FOR DEFENDANT

N/A

PROCEEDINGS: ORDER DISMISSING CASE SUA PONTE FOR LACK OF SUBJECT MATTER JURISDICTION

Before the Court is Plaintiff's motion for a preliminary injunction suspending and restraining all proceedings in California court.[1] For the reasons set forth below, the Court sua sponte dismisses the case with prejudice due to lack of subject matter jurisdiction. In light of this dismissal, the Court will not render a decision as to the merits of the preliminary application injunction application.

The facts and circumstances of this case arise from the marriage dissolution proceedings of plaintiff Charles J. Tittle and his former wife (and defendant)

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[1] By Minute Order dated May 28, 2004 the court denied the portion of the application seeking a temporary restraining order.

Dorothy D. Bottorff. According to Plaintiff's Complaint, he was denied his constitutional due process rights by the California family courts during the dissolution proceedings because (1) despite the fact that he suffered from clinical depression, he was not provided a competency hearing nor appointed an guardian ad litem, (2) the court lost track of documents filed, and (3) the family court improperly altered the terms of a stipulated judgment between Plaintiff and Ms Bottorff. Additionally, Plaintiff complains that the California Superior Court (in which Plaintiff began new litigation after completion of the dissolution proceedings) and California Court of Appeals violated his constitutional rights by rejecting Plaintiff's breach of contract claim (breach of contract claims (based on the stipulated judgment

thatarose during the dissolution proceedings), refusing to set aside the family court judgment, and ultimately concluding that Plaintiff should be sanctioned for filing a frivolous appeal. In his Complaint, Plaintiff makes additional allegations against defendant for interception of the mails and improper receipt of his disability checks. As result, Plaintiff request a temporary restraining order, preliminary injunction, monetary damages, and declaratory judgments invaliding the prior state judgment and finding that Plaintiff had a valid breach of contract claim and that the family court improperly changed the terms of the stipulation and violated plaintiff's constitutional rights.

The Rooker-Feldman doctrine divests this court of its ability to adjudicate this matter. Under the

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES-GENERAL

Case No. SACV 04-0521 CJC (Anx)

Date June 28, 2004

Rooker-Feldman doctrine, a federal district court does not have subject matter jurisdiction to hear a direct appeal from final judgment of state court. Moreover, it is a forbidden de facto appeal under Rooker-Feldman "when the plaintiff in a federal district court complains of legal wrong allegedly committed by the state court, and seeks relief from judgment of that court". The purpose of the Rooker-Feldman doctrine is to prevent federal courts from second-guessing the decision of state courts. The test for application of the

doctrine has been articulated as follows if the federal claims are inextricably intertwined with the state court's decision so that adjudication of the federal claim would undercut the state ruling or require interpretation of state court laws or procedural rules, then the federal complaint must be dismissed for lack of subject matter jurisdiction. Rooker-Feldman applies to state judgments even if the state court appeals are not final. The facts alleged by Plaintiff make this a clear case for application of Rooker-Feldman. Any adjudication of the merits of Plaintiff's claims of improper conduct by the state courts in the marital dissolution or other state court proceedings would require this court to review the previous litigation, a review that would run contrary to this Court limited grant of original jurisdiction. In other

words, it would be impossible for the Court to review in the abstrct Plaintiff's constitutional claims. That Plaintiff has couched his claim as arising under 42 U S C ł 1983 rather than a review of the state court decision does not change the analysis or negate application of Rooker-Feldman. Finally, even Plaintiff's allegations of improper interception ogf his worker's compensation checks are intertwined with the marital dissolution in state court as Plaintiff himself vlaims that the issue was raised and dismissed by the family law courts (Plaintiff's Complaint, II 15)

Additionally, the Court lacks subject matter jurisdiction to adjudicate this case because it is essentially a family law matter, left to sound discretion of the the state tribunal. The Supreme Court stated that the "domestic relations exception"

divests federal court of the power to issue divorce, alimony, and child custody decrees due to the fact that domestic relations belong to the laws of the state. Although not seeking a divorce decree in the traditional sense, Plaintiff's entire case emanates from state court litigation concerning a marital dissolution and he seeks (in part) a rewriting of the family court judgment, rendering application of the exception appropriate.[2]

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[2] In addition to the above doctrines that divest this Court of subject matter jurisdiction, the Court notes that there are numerous other justification for dismissing this action sua sponte. For example, the action is barred against the State of California and its courts by virtue of the Eleventh Amendment's grant of sovereign immunity. The Eleventh Amendment bars suits that seek either damages or injunctive relief against a state, an arm of the state, its instrumentalities, or its agencies Franceschi v. Schw[illegible] 57 F.3d 828, 831 (9th Cir. 1995). Similary, the § 1983 cause of action against Defendant Bottorff is unavailing as there is no allegation in the complaint that Ms Bottorff was acting under "color of state law" when she allegedly deprived Plaintiff of his constitutional rights. Finally, the allegations in Plaintiff's complaint also implicate the bar of res judicata. Plaintiff himself asserts that he raised his claims of incompetency, interception of mails, and due process violations in the state proceedings and that

Accordingly, the Court dismisses the present action with prejudice.

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these were either decided against him or ignored by the appeals court. Therefore, any adjudication in this Court would be a re-litigation of matters previously asserted and determined.

(3)

No. 05-985

In The
Supreme Court of the United States

CHARLES J. TITTLE,

Petitioner,

v.

DOROTHY BOTTORFF-TITTLE, et al,

Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Ninth Circuit

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED FOR REVIEW

Was Petitioner's federal complaint properly dismissed for lack of subject matter jurisdiction when the sole purpose of the federal complaint was to overturn judgments and rulings in two prior state court actions, one of which was a dissolution of marriage action?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Constitutional Provisions, Statutes, Codes

INTRODUCTION

This federal lawsuit is a continuation of an obsessive legal battle waged by Petitioner against Respondent Dorothy Bottorff-Tittle (hereinafter "Respondent"). Petitioner's attacks began during a state dissolution of the marriage action (hereinafter "Dissolution") between Petitioner and Respondent. Thereafter, Petitioner filed a state court action (hereinafter "state court action") against Respondent in an attempt to overturn rulings and judgments made in the Dissolution. All of the issues raised in the state court action had been determined in the Dissolution. Judgment was rendered for Respondent in the state court action and thereafter the state appellate court issued sanctions against Petitioner for the duplicative legal case.

This federal lawsuit is simply one more attempt by Petitioner to overturn the rulings in the Dissolution and to avoid sanctions issued by the state appellate court in the state court action. The district court dismissed the federal complaint for lack of subject matter jurisdiction holding that the claims raised in the complaint were inextricably intertwined with the prior state court rulings and had already been determined in those prior state court cases. The Ninth Circuit Court of Appeals affirmed.

OBJECTION TO PETITIONER'S STATEMENT OF JURISDICTION

Petitioner's jurisdictional statement is inaccurate. The federal complaint was not dismissed pursuant to a F.R.C.P. Rule 12 (b)(6) motion for failure to state a claim upon which relief can be granted. Rather the federal complaint was dismissed sua sponte by the district court for lack of subject matter jurisdiction.

Further, the petition is untimely. The petition prays for review of both the underlying order (and judgment) dismissing the federal complaint and the sanctions ruling in the state court action. The petition as to the state court action is untimely on its face. Judgment in the state court action was entered on March 21, 2002. The judgment was affirmed on appeal, and sanctions were issued, by opinion dated March 2, 2004. Petitioner's Appendix (hereinafter "Pet.App.") D. Petitioner's petition for review to the California Supreme Court was denied on April 21, 2004. This petition, filed in October of 2005, is late.

The petition is also untimely as it applies to the federal lawsuit since the intent of the federal complaint was to overturn a 1998 order in the Dissolution and to avoid the March 2, 2004 sanctions order issued in the state court action. In essence, the petition is an attempt to avoid the time limits within which

Petitioner was required to file a petition for writ of certiorari in those prior state court cases by filing this improper federal lawsuit and then seeking review of the issues in those prior state court cases through the dismissal of this federal lawsuit.

STATEMENT OF THE FACTS

A. THE DISSOLUTION

Petitioner and Respondent were married in California in 1985. During the marriage they purchased a marina (hereinafter "Marina"). On December 22, 1994 Respondent filed for dissolution of marriage. (Bottorff-Tittle v. Tittle, California Superior Court Case No. 94D11307) The Marina was a community asset to be distributed by the court in the Dissolution.

On August 15, 1996 the parties entered into a stipulation concerning certain worker's compensation funds. Allegedly two or three of the worker's compensation checks had been sent (due to Petitioner's own negligence) to Petitioner's prior address. There is no dispute that these misdirected checks were immediately given to Petitioner's counsel. The stipulation provided that Petitioner's attorney would maintain the workers compensation funds in an account until distribution of the assets in the Dissolution. These funds were an issue in the Dissolution.

There is also no dispute that Petitioner did not abide by the terms of the stipulation but simply cashed the checks and retained the funds himself.

Judgment in the Dissolution was entered on March 3, 1997. Both parties were represented by counsel. The workers compensation funds were formally released to Petitioner and the Marina was ordered locked and sold. The court retained jurisdiction over the sale of the Marina. No one appealed the March 3, 1997 judgment.

Petitioner did not cooperate in the sale of the Marina. In December of 1997 Respondent exasperatedly agreed to sell her portion of the Marina to Petitioner (hereinafter "December 1977 Agreement"). The sale was not completed because Petitioner sent no money or paperwork and attempted to unilaterally modify the terms of the December 1997 Agreement.

Respondent finally had to file an Order to Show Cause to enforce the March 3, 1997 Judgment in the Dissolution and to complete the sale of the Marina. At the hearing Respondent again agreed to sell her portion of the Marina to Petitioner as long as the court supervised the sale. A handwritten stipulation evidenced the terms of the agreement, including Petitioner's waiver of costs for repairs to the Marina and any alleged arrearages in spousal support.

A proposed Finding and Order After Hearing (hereinafter "Order") filed by Respondent's counsel stated that Respondent waived all costs of repairs to the Marina, all alleged spousal support arrearages "and shall hold Petitioner harmless from same." Petitioner filed unsuccessful objections to the hold harmless language in the Order. The court signed the Order on June 18, 1998. The transfer of the Marina was completed. No one appealed the June 18, 1998 Order.

On July 21, 1999 and over a year after the consummation of the Order, Petitioner filed a motion to vacate the Order. Petitioner again objected to the hold harmless language. Petitioner also filed a motion to overturn the August 15, 1996 worker's compensation stipulation. Petitioner's motions were denied. The court found no grounds to set aside the August 15, 1996 stipulation or the June 18, 1998 Order and held that the time to bring any such motion had expired.

Petitioner pursued the denial of his motions through the trial court and eventually filed three separate writs with the California Appellate Court. The California Appellate Court held that Petitioner's attacks on the August 15, 1996 stipulation and the June 18, 1998 Order were inappropriate and untimely. Petitioner filed no further papers in the Dissolution.

B. THE STATE COURT ACTION

The operative complaint in the state court action (Tittle v. Bottorff, California Superior Court case no. 807533) was based on the alleged "breach" of the December 1977 Agreement in the Dissolution and sought again to have the court remove the hold harmless language in, or to vacate, the June 18, 1998 Order in the Dissolution. The state court action was initially stayed because it was pending between the same parties and on the same issues as in the Dissolution.

After the state court action was resurrected, Respondent brought a successful motion for summary judgment. The motion argued in part that the state court action was an improper collateral attack on the judgment in the Dissolution and was barred by the doctrines of res judicata and collateral estoppel.

Petitioner filed opposition to the summary judgment motion, arguing in great part that he should be relieved of the hold harmless language in the Order because he was "incompetent" during the Dissolution. Petitioner submitted his evidence of incompetency, which showed that at one time he had suffered from depression. Petitioner never argued that the distribution of assets in the Dissolution was unfair, nor did he object to the sale of the Marina on the terms set forth in the

Order. Petitioner has never disputed that the Order was fully consummated.

The state court found the evidence of Petitioner's alleged incompetence lacking. On March 1, 2002 Respondent's motion for summary judgment was granted on numerous bases.

Petitioner filed an appeal in the state court action, which argued in part that Petitioner's incompetency during the Dissolution raised due process issues. He again requested that the hold harmless language in the Order be redacted. Respondent served and filed a timely motion for sanctions and a Respondent's Brief.

The judgment in the state court action was affirmed on appeal. "Indeed, there is nothing at issue in Charles' present lawsuit. . . that was not the subject of a claim litigated no less than twice in the divorce suit." Pet. App. D-18 In regard to the claim of incompetency, the court stated that '[m]any people suffer anxiety or depression during divorces. If Charles' idea were to take hold, nothing in our family law courts would ever be final. The trial judge here was very correct indeed to require substantial evidence of legal incompetency, not merely evidence of treatment for depression or anxiety." Pet.App. D-29

The California Appellate Court also granted Respondent's motion for sanctions. "From the record before us, for the past

five or so years, Charles has forced Dorothy to incur great legal expense in a civil case which is about nothing more than some ill-defined minor matters collateral to the disposition of one item of community property in a divorce case. . ."Pet.App. D-31

Petitioner filed a petition for review with the California Supreme Court, which argued that his alleged incompetency during the Dissolution raised due process issues. The petition was denied on April 21, 2004. Petitioner filed no further papers in the state court action.

STATEMENT OF THE CASE

Petitioner's federal complaint herein seeks modification of the Order in the Dissolution by redacting the hold harmless language; federal review of the state court decisions regarding Petitioner's claim of incompetency; and an order overturning the sanctions order issued by the California Appellate Court. Petitioner filed motions for a temporary restraining order and preliminary injunction to prevent the California state courts from proceeding on any sanctions orders.

Defendants in the federal lawsuit filed motions to dismiss pursuant to F.R.C.P. Rule 12(b)(6) for failure to state a claim and for lack of subject matter jurisdiction.

At about the time that Defendants filed their motions to dismiss, the district court continued Petitioner's motion for preliminary injunction in order to allow the court to evaluate the issue of subject matter jurisdiction. The court invited all parties to file letter briefs regarding the jurisdictional issues, including the application of the Rooker-Feldman Doctrine.

After oral argument, the district court determined that it did not have subject matter jurisdiction over the claims raised in Petitioner's federal complaint. "Under the Rooker-Feldman Doctrine, a federal district court does not have subject matter jurisdiction to hear a direct appeal from the final judgment of a state court. Moreover, it is a forbidden defacto appeal under Rooker-Feldman "when the plaintiff in a federal district court complains of a legal wrong allegedly committed by the state court and seeks relief from the judgment of that court." Pet.App. C-5

The district court also noted that the "domestic relations exception" divested federal courts of the power to issue divorce decrees since domestic relations belong to the laws of the state. Petitioner's federal case arose directly from the Dissolution and sought a re-writing of the family court judgment. Thus application of the exception was appropriate. Pet.App. C-7 The federal action was also improper as against Respondent since

there was no allegation that she was acting under color of state law. Pet.App. C-7-footnote 2. Finally "the allegations in Plaintiff's Complaint implicate the bar of res judicata" based on Petitioner's own admissions. Pet.App. C-7 footnote 2

Defendants' then pending F.R.C.P. 12(b)(6) motions were not ruled upon since they were not yet before the district court.

Petitioner's appeal to the Ninth Circuit Court of Appeals confirmed the propriety of the dismissal and the lack of subject matter jurisdiction. "We conclude that the claims raised by Tittle in his § 1983 action are "inextricably intertwined" with the state court decisions rendered in relation to the Tittles' marriage dissolution proceedings such that the adjudication of the federal claims would undercut those state court rulings. . . Accordingly, the district court properly dismissed the complaint for lack of subject matter jurisdiction. See *Exxon Mobile Corp v. Saudi Basics Indus. Corp.* 125 S. Ct. 1517, 1521-22 (2005)" Pet.App. B-2

ISSUE FOR REVIEW

Petitioner miscasts the issues of review. The federal complaint was dismissed sua sponte by the district court for lack of subject matter jurisdiction. Thus, the only issue is

whether the district court had subject matter jurisdiction and whether the dismissal was appropriate pursuant to, among other basis, the Rooker-Feldman Doctrine. Petitioner's Questions Presented ignore subject matter jurisdiction and merely attempt to re-argue the factual issues presented in the federal complaint; issues which were determined in the two prior state court cases.

Petitioner's Questions Presented also misstate the facts. First, competency during the federal lawsuit was not an issue. Petitioner was represented by counsel in the federal lawsuit and Petitioner declared in at least two affidavits filed in this federal lawsuit, one signed on May 21, 2004 and one signed on March 21, 2005, that he was fully competent. Rather, Petitioner argued that he was incompetent during the prior Dissolution in an attempt to overturn rulings in that Dissolution.

Second the federal complaint was not dismissed pursuant to a F.R.C.P. 12(b)(6) motion for failure to state a claim upon which relief can be granted but was dismissed sua sponte by the court (and after hearing) for lack of subject matter jurisdiction.

Third there was no "admission" of any criminal conduct. In fact there has never been any impropriety on Respondent's behalf regarding any mail or workers compensation checks. In this federal lawsuit, however, Petitioner misrepresented the

activities that had occurred in the Dissolution regarding certain workers compensation funds and had even misrepresented the position that he had taken during the Dissolution. Any comments by Respondent were merely an explanation of the dispute that occurred during the Dissolution concerning the California workers compensation funds, the resolution and stipulation regarding that dispute, and the reason the funds were a non-issue.

REASONS FOR DENYING THE PETITION

There is no reason to grant Petitioner's petition. The district court's dismissal of the federal complaint does not conflict with the decisions of any other court of appeals nor does this case present an important question of federal law that needs to be settled. While this Court has recognized that some federal courts have "at times extended Rooker-Feldman far beyond the contours of the Rooker and Feldman cases," (*Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280 at 283, 125, S. Ct. 1517, 161 L.Ed. 2d 454 (2005), the instant case in not one of them. In fact, this case is classically appropriate for the application of the Rooker-Feldman Doctrine and comes squarely within the parameters for the application of the doctrine as set forth in *Exxon Mobile Corp. v. Saudi Basic*

Industries Corp., 544 U.S. 280 125, S. Ct. 1517, 161 L.Ed.2d 454 (2005). Each and every claim raised in Petitioner's federal complaint is an attempt to overturn a ruling or judgment in the Dissolution or the prior state court action.

A. THE APPLICATION OF ROOKER-FELDMAN

The federal district courts are courts of limited jurisdiction. A plaintiff seeking relief from a district court has the burden to prove that jurisdiction exists. (*Thornhill Publishing C., Inc v. General Telephone & Electronics Corp.* 594 F.2d 730, 733 (9th Cir. 1979) In effect it is presumed that a cause of action lies outside this limited jurisdiction and the burden of establishing the contrary rests upon the party asserting jurisdiction. *Kokkonen v. Guardian Life Ins. Co.* 511 U.S. 375, 395, 114 S.Ct. 1673, 1675 (1994)

The Rooker-Feldman doctrine recognizes that the federal district courts lack subject matter jurisdiction to review state court judgments and orders. *Rooker v. Fidelity Trust Co.*, 263 U.S. 413, 416, 68 L.Ed. 362, 44 S.Ct. 149 (1923); *District of Columbia Court of Appeals v. Feldman* 460 U.S. 462, 486-87, 75 L.Ed. 2d 206, 103 S.Ct. 1303 (1983). The United States Supreme Court is vested under 28 U.S.C. §1257 with the jurisdiction over appeals from final state court judgments. That grant of jurisdiction is exclusive. Thus, under what is known as

the Rooker-Feldman Doctrine, the lower federal courts are precluded from exercising appellate jurisdiction over final state court judgments. *Lance v. Dennis* 2006 U.S. Lexis 1105 (2006)

The Rooker-Feldman doctrine applies to "cases brought by state-court losers complaining of injuries caused by state-court judgments rendered before the district court proceedings commenced and inviting district court review and rejection of those judgments." *Exxon Mobile Corp. v. Saudi Basic Industries Corp.*, 544 U.S. 280, 283, 125, S. Ct. 1517, 161 L.Ed.2d 454 (2005).

To the extent that a plaintiff requests the district court to conduct a review of a state court's judgment or to scrutinize the state court's application of rules and procedures, the district court lacks subject matter jurisdiction over the complaint. *Allah v. Superior Court of the State of California*, 871 F.2d 887, 890-91 (9th Cir. 1989) "If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court and seeks relief from a state court judgment based on that decision, Rooker-Feldman bars subject matter jurisdiction in federal district court." *Noel v. Hall,* 341 F.3d 1148, at 1164 (9th Cir. 2003).

District courts have no authority to review final determinations of state court proceedings "even when the challenge to the state court decision involves constitutional

issues." *Worldwide Church of God v. McNair* 805 F.2d 888, 891 (9th Cir. 1986)). The state courts are as competent as federal courts to decide constitutional issues. *Worldwide Church of God v. McNair,* 805 F.2d 888, 891 (9th Cir. 1986). "[L]ower federal courts possess no power whatever to sit in direct review of state court decisions. This rule applies even though the challenge is anchored to alleged deprivations of federally due process and equal protection rights." *Id* at 892; *See also District of Columbia Court of Appeals v. Feldman* 460 U.S. 462 at 416, 75 L.Ed. 2d 206, 103 S.Ct. 1303 (1983); *Bianchi v. Rylaarsdam* 334 F.3d 895, 898 (9th Cir. 2003) Thus, the prohibition of the Rooker-Feldman doctrine cannot be avoided simply by "dressing" the claim in a constitutional issue.

The Rooker-Feldman doctrine prevents a losing party in a state court from seeking federal district review of the state judgment if those rights are inextricably intertwined with the state ruling. *Bianchi v. Rylaarsdam* 334 F.3d 895, 898 (9th Cir. 2003) A claim is inextricably intertwined in the state court proceedings if the relief requested would effectively reverse the state court decision or void its ruling. *Bianchi v. Rylaarsdam* 334 F.3d 895, 898 (9th Cir. 2003); *Fielder v. Credit Accept. Corp.* 188 F.3d 1031, 1034 (8th Cir. 1999) Where the district court must hold that the state court was wrong in order to find

for the plaintiff, the issues presented to both courts are inextricably intertwined and federal jurisdiction is lacking. *Doe Associates Law Offices v. Napolitano* 252 F.3d 1026, 1030 (9th Cir. 2001)

In this case, lack of subject matter jurisdiction appears on the face of the federal complaint. *Thornhill Publishing Co., Inc, v. General Telephone & Electronics Corp.* 594 F.2d 730, 733 (9th Cir. 1979) The complaint was brought by a state-court loser who complains of alleged injuries caused by state-court judgments and requests district court review and rejection of those judgments. For example, the federal complaint seeks reversal or modification of the June 18, 1998 Order entered in the Dissolution specifically indicating that Petitioner's prior legal proceedings to overturn the Order (in both the Dissolution and the state court action) had been rejected. Thus, the federal complaint seeks direct review of not only the June 18, 1998 Order but all of the subsequent state court rulings denying Petitioner's many attempts to overturn or modify that Order.

Petitioner's other claims (incompetency, the worker's compensation checks and the sanctions ordered in the state court action) also issue directly from orders or rulings in the Dissolution and the state court action. In fact, every legal proceeding, document, or motion filed by Petitioner against

Respondent since June 18, 1998 was an attempt directly or indirectly to overturn the rulings and judgments in that Dissolution. Thus, the complaint herein is a de facto appeal from the Dissolution and the state court action (which also sought to overturn the rulings in the Dissolution) and is precluded by the Rooker-Feldman.

B. LEAVE TO AMEND

Petitioner's only argument as to subject matter jurisdiction is that he should have been allowed to amend his complaint. Petitioner's argument, however, is based on his misconception that the complaint was dismissed pursuant to a motion for failure to state a claim. Such is not the case.

Unlike mere defects in the form of a pleading, which can be remedied by amendment, subject matter jurisdiction must exist when the complaint is filed. If jurisdiction is lacking, the district court has no power to do anything except dismiss. If jurisdiction is lacking, any order granting leave to amend would be a nullity. *Morongo Band of Mission Indians v. California State Bd. Of Equalization* 858 F.2d 1376, 1381 (9th Cir, 1988). A district court is powerless to grant leave to amend when it lacks jurisdiction over the original complaint. *Id.* at 1381

In this case, all of the claims raised in the federal complaint were an attempt to overturn rulings and judgments in state court

proceedings. Thus, the district court had no jurisdiction and had no power to grant leave to amend. In reality any leave would be futile since the entirety of Petitioner's claims, as asserted for the last eight years, are based solely on the contents of the prior state court cases and nothing more.

C. DOMESTIC RELATIONS EXCEPTION APPLIES

The whole subject of domestic relations belongs to the laws of the states and not to the laws of the United States. *In re Burrus* 136 U.S. 586, 593, 34 L.Ed 500, 10 S.Ct. 850 (1890); *Mansell v. Mansell* 490 U.S. 586, 587, 34 L.Ed.2d 675, 109 S.Ct. 2023 (1989) So strong is the federal courts deference to state law in this area that the courts have recognized a "domestic relations exception" that "divests the federal courts of power to issue divorce, alimony, and child custody decrees. *Ankenbrandt v. Richards* 504 U.S. 689, 703, 119 L.Ed2d 468, 112 S.Ct. 2206 (1992)

In this case, Petitioner seeks to modify or overturn the Order in the Dissolution; an order which distributed the last piece of property and resolved the remaining issues between the parties in the Dissolution. It is the order by which the March 3, 1997 judgment in the Dissolution was finally consummated. Thus, it directly affects the domestic relations of the parties and directly affects the divorce decree issued in that Dissolution.

CONCLUSION

For the reasons set forth above, Respondent respectfully requests that this Court deny the Petition.

DATED: March 6, 2006

Respectfully Submitted,

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No. 05-985

In The
Supreme Court of the United States

CHARLES J. TITTLE,

Petitioner,

v.

DOROTHY D. BOTTORFF-TITTLE; SUPERIOR COURT OF ORANGE COUNTY; ORANGE COUNTY; STATE OF CALIFORNIA,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the United States District Court have jurisdiction to review final state court decisions?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

FEDERAL CASES

TABLE OF AUTHORITIES – Continued

INTRODUCTION

The sole issue raised in Mr. Tittle's Petition for Writ of Certiorari is whether the United States District Court has jurisdiction over final state court decisions. This petition represents Mr. Tittle's continuing effort to overturn decisions originally made in his marital dissolution proceedings heard before the California Superior Court in and for the County of Orange. The three causes of action of petitioner's complaint in the United States District Court attempt to state claims for violation of civil rights and for injunctive relief pursuant to 42 U.S.C. Section 1983. He is attempting to restrain the Orange County Superior Court and Ms. Bottorff-Tittle from proceeding with certain state court actions. Without a hearing, the District Court denied plaintiff's Ex Parte Application for a temporary restraining order. Plaintiff subsequently filed a Motion for Preliminary Injunction. Each of the defendants independently filed Motions to Dismiss plaintiff's Complaint under *Federal Rules of Civil Procedure* Rule 12(b)(6) as well as on the grounds that the District Court lacked subject matter jurisdiction of the Complaint.

While these motions were pending, the District Court invited further briefing of the parties on the issue of whether or not the court had subject matter jurisdiction over the case. A hearing was held in the District Court on June 28, 2004 in which all parties were present and represented by counsel. District Judge Carney, after oral argument by counsel for petitioner, dismissed this case for lack of subject matter jurisdiction pursuant the *Rooker-Feldman* Doctrine.

The Ninth Circuit Court of Appeals summarily affirmed this decision and the panel voted to deny Mr. Tittle's petition for rehearing.

STATEMENT OF THE CASE

I. FACTS

Petitioner's Complaint seeks to have the District Court review and overturn decisions originally made in appellant's marital dissolution action in the Orange County Superior Court. As part of that proceeding, certain property in Arkansas was ordered to be sold and the proceeds divided equally between himself and Ms. Bottorff-Tittle his ex-wife. The original sale did not go through as planned and at an April 1998 Order to Show Cause hearing, a stipulation was entered that plaintiff would purchase the property himself. He then objected to the formal order prepared by opposing counsel with respect to the stipulation. This objection was denied.

Mr. Tittle then filed a separate civil action in the Orange County Superior Court against Ms. Bottorff-Tittle for having backed out of the original deal concerning the Arkansas property. Concurrently therewith he filed a motion to vacate the judgment in the family law court. This motion was denied. Judgment was subsequently entered against him in the civil case by way of granting defendant's motion for summary judgment. He then appealed this judgment to the California Court of Appeal, Fourth District, Division Three. In an unpublished written opinion dated March 2, 2004, this judgment was upheld and the appeal itself deemed frivolous. The case was

returned to the Orange County Superior Court for decision upon the amount of sanctions to be awarded.

The instant Complaint in three causes of action challenges these state court rulings and seeks the District court's review and overturning of those decisions.

II. ISSUES FOR REVIEW

A. Capacity of Mr. Tittle

Mr. Tittle in his Petition for Writ of Certiorari has listed four separate issues for review by this court. The first of these is "Upon learning that federal plaintiff may have a lack of capacity, should the federal district court judge have suspended further proceedings under *Federal Rules of Civil Procedure* Rule 12(b)(6)?"

It should be noted that the issue of Mr. Tittle's capacity or lack thereof to proceed under *Federal Rules of Civil Procedure* Rule 17 was not addressed by the plaintiff in his original Complaint and was not addressed by counsel at the hearing on the court's motion to determine whether or not it had subject jurisdiction over this matter. The question of the capacity of Mr. Tittle raised at the District Court hearing dealt with whether or not the decision of the State Trial Court and Court of Appeal with respect to capacity could raise an issue under 42 U.S.C. Section 1983. The court ruled it could not.

This issue was appropriately addressed and denied by the California Appellate Court in the ruling as attached to the plaintiff's petition here. Whether or not to review this decision of the California Appellate Courts then becomes an issue of subject matter jurisdiction addressed under the *Rooker-Feldman* discussion below.

B. Petitioner's Ability to Amend

Petitioner's second presented question for review was "Before dismissing plaintiff's 1983 civil rights complaint, should the Federal District Court have allowed plaintiff to amend his initial complaint?"

It should first be noted that plaintiff's case was dismissed on the court's own motion for lack of subject matter jurisdiction (*Federal Rules of Civil Procedure* Rule 12(b)(1)). Contrary to petitioner's argument, the case was not dismissed pursuant to *Federal Rules of Civil Procedure* Rule 12(b)(6) for failing to state a cause of action.

It is clear on the face of the Complaint itself as well as the materials contained within exhibits attached to that complaint that the district court lacks subject matter jurisdiction over the claims raised therein. The gist of Mr. Tittle's Complaint was to have reviewed decisions made in the California courts. No matter how the facts were alleged to plead, the relief would still amount to direct review of those state court decisions. It is clear that this defect cannot be cured by allegations of different facts. Therefore, it was appropriate to dismiss the Complaint without allowing plaintiff leave to amend (*Schreiber Distributing Co. v. Serv-Well Furniture Company, Inc.*, 806 F.2d 1393, 1401 (9th Cir. 1986); *Desaigoudar v. Meyer, Cord*, 223 F.3d 1020, 1021 (9th Cir. 2000); *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995).)

C. Ninth Circuit Consideration

The plaintiff's third question presented for review is "Before denying plaintiff's appeal, should the Ninth Circuit Court of Appeals also have considered appellee's

attorney's admissions of his client's federal criminal conduct in California State Court proceedings?" This issue is not one brought before the court in the petitioner's Complaint nor properly brought before the court in any manner whatsoever.

D. *Rooker-Feldman* Doctrine

The fourth question presented by petitioner for review was "Should the Ninth Circuit Court of Appeals have considered the California State Court's denial of petitioner's procedural due process rights?" Presumably plaintiff is referring to causes of action he attempts to state under 42 U.S.C. Section 1983. These issues were not appropriately presented to the court as it was determined based upon the face of the Complaint that the District Court lacked subject matter jurisdiction in this matter. Plaintiff's Complaint is a faintly veiled attempt at, once again, overturning the decisions made by the Orange County trial court and Appellate Courts. The District Court appropriately determined under the *Rooker-Feldman* doctrine that it had no jurisdiction to hear those matters. As noted in the recent case of *Lance v. Dennis*, 2006 W.L. 386360, 74 U.S.L.W. 3457:

> "The *Rooker-Feldman* doctrine prevents the lower federal courts from exercising jurisdiction over cases brought by 'state-court losers' challenging 'state-court judgments' rendered before the district court proceedings commenced. *Exxon Mobil Corp. v. Saudi Basic Industries, Corp.*, 544 U.S. 280, 284 (2005)."

In *Lance*, this court vacated the lower court opinion concluding the *Rooker-Feldman* doctrine did not bar

plaintiffs from proceeding because they were not in privity to parties in the earlier state court case.

Petitioner in this case seeks review of state court decisions as the matter has been previously determined in family law proceedings, a civil lawsuit and by the California Appellate Courts. As such the District court does not have subject matter jurisdiction to hear this matter.

> "We believe the following general formulation describes the distinctive role of the *Rooker-Feldman* doctrine in our Federal System: If a federal plaintiff asserts as a legal wrong an allegedly erroneous decision by a state court, and seeks relief from a state court judgment based on that decision, *Rooker-Feldman* bars subject matter jurisdiction in federal District court."

Noel v. Hall, 341 F.3d 1148, 1164 (9th Cir. 2003).

> "As courts of original jurisdiction . . . [the United States District Courts] do not have jurisdiction over direct challenges to final decisions of state courts, even if those challenges allege that the state court's action was unconstitutional [citation]. This rule applies even though the direct challenges anchored two alleged deprivations of federally protected due process and equal protection rights. *Feldman* [*D.C. Court of Appeal v. Feldman*, 460 U.S. 462 (1983)], 460 U.S. at 484-486, 103 S.Ct. at 1316-1317; *McNare*, [*Worldwide Church of God v. McNare*, 805 F.2d 888, (9th Cir. 1986)] 805 F.2d at 891. In the present case, *Allah* filed a personal injury action in the Los Angeles Superior Court, which was dismissed by the state court because of his failure to comply with the discovery order. In his petition to the District court, *Allah* argued that the state court

> violated his federally protected equal protection and due process rights by dismissing this case on "procedural technicalities," instead of making a final determination on the merits. To the extent that *Allah* requested the district court to conduct a direct review of the state court's judgment and to scrutinize the state court's application of various rules and procedures pertaining to this case, the district court lacks subject matter jurisdiction over his complaint. The proper court in which to obtain direct review of state-court determinations is the United States Supreme Court. 28 U.S.C 1257(3); *McNare*, 805 F.2d at 891, see also *Feldman*, 46 U.S. 486, 103 S.Ct. at 1317." *Allah v. Superior Court* (Doeve), 871 F.2d 887, 890-891 (9th Cir. 1988).

That is precisely the situation that is presented in this case. Petitioner seeks review and overturning of state court decisions by the federal district court. This is inappropriate. A final decision of the state court is properly reviewed by the United States Supreme Court in its original jurisdiction.

REASONS FOR DENYING REVIEW

Supreme Court Rule 10 indicates that "a Petition for Writ of Certiorari will be granted only for compelling reasons." It sets for guidelines for granting review foremost among these is whether there is a conflict between the circuits (*Bunting v. Mellen*, 541 U.S. 1019 (2004)).

"A Petition for a Writ of Certiorari is rarely granted when the asserted error consists of erroneous factual findings or the misapplication of a properly stated rule of

law." Without one of the stated grounds, the court will not typically review a United States Court of Appeals decision simply to correct a proceed error in that decision. (*Ticor Title Insurance Company v. Brown*, 511 U.S. 117, 122 (1994).)

The petitioner's primary ground for seeking review in this court is that there is an existing conflict among the circuits with respect to the application of Rule 12(b)(6) motions with respect to being allowed to amend civil rights claims. This issue is irrelevant to the subject raised in the instant case. The petitioner's Complaint was dismissed under *Federal Rules of Civil Procedure* Rule 12(b)(1) for lack of subject matter jurisdiction not for failing to state a claim under which relief can be granted. As noted above, it is clear from the petitioner's Complaint and the nature of the claim that it lacks subject matter jurisdiction for the United States District Court. Any amendment would not correct this.

Secondly, the petitioner opines that this court should entertain the petition since a conflict exists on the application of Rule 17(b) and (c) of the *Federal Rules of Civil Procedure* with respect to the appointment of a guardian ad litem. Again, as addressed above, the plaintiff's capacity was never raised in the United States District Court nor in petitioner's Complaint. The issue of this capacity was raised by the plaintiff in the State Courts and based upon the decision of the California Appellate Court, the matter was considered and denied.

Finally, the plaintiff's petition argues there is an "ever widening conflict between the decisions of the Federal Courts of Appeal on the application of the *Rooker-Feldman* doctrine." The first of the cases cited by the petitioner to

support this position is *Robinson v. Ariyoshi*, 753 F.2d 1468 (9th Cir. 1985). However it should be noted that this decision was vacated upon the granting of a Writ of Certiorari and subsequent decision (477 U.S. 902 (1986)). The other cases cited by plaintiff *Bionche v. Rylaarsdam*, 334 F.3d 895 (9th Cir. 2003) and *Catz v. Shocker*, 142 F.3d 279 (6th Cir. 1998) do not support plaintiff's position for a split of the circuits with respect to the *Rooker-Feldman* doctrine. In fact, this court has recently issued opinions in *Lance v. Dennis*, *supra*, and *Exxon Mobil Corporation*, *supra*, in the current and last year's term of the court, discussing the application of the doctrine.

Finally, the petitioner argues that "the decision below is incorrect." However as soundly reasoned by the United States District Court and affirmed by the Ninth Circuit Court of Appeals, the plaintiff's Complaint is barred for lack of the District Court having subject matter jurisdiction under the *Rooker-Feldman* doctrine.

CONCLUSION

For all of the above reasons, the Petition for Writ of Certiorari should be denied.

Respectfully submitted,

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DATED: March 6, 2006

NO. 05-985

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES J. TITTLE
Petitioner,

v.

DOROTHY D. BOTTORFF-TITTLE, et al
Respondents,

On Petition For Writ Of Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITIONER'S SUPPLEMENTAL REPLY BRIEF TO RESPONDENT, DOROTHY D. BOTTORFF-TITTLE OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

California Cases

California Statutes / Rules

Other treaties / Statutes / publications

INTRODUCTION

This reply brief to respondent Dorothy Bottorff-Tittle to show there is lot of untruths, misleading statements, bias statements and trying to mislead this court in believing that petitioner has always do everything possible to keep respondent from get her misguided judgment satisfied at the cost of petitioner losing his constitutional rights.

RESPONSE TO RESPONDENT BOTTORFF-TITTLE'S OBJECTION TO PETITIONER'S STATEMENT OF JURISDICTION

Respondent's jurisdictional statements are inaccurate and no where supported by authority or authorities.

Under California statute a failure to appoint a guardian ad litem is a violation of Procedural Due Process Law, and this failure is not readily appealable, California Civil Procedure Code, section 904.1. Parties seeking to contest a denial of procedural due process must wait until a final judgment.

The granting or denying a fair hearing is procedural in nature. In petitioner's federal complaint petitioner alleged he was denied a fair hearing in the state family law court, the regular civil court, in the appellate court, and at the misguided sanction ruling or incomplete ruling.

This court has recognized that in state proceedings a party may be denied procedural due process which may lead to a 1983 Civil Rights Action or actions, Zinermon v. Burch, 494 U.S. 113, 138-139, 108 Led 2d 100, 110 S.Ct. 975. Even the State of California has recognized the need to protect Procedural Due Process Rights in their courts, Gilbert v. City of Sunnyvale (2005) 130 Cal.App. 4th 1264, 1276-1277.

STATEMENT OF FACT AND DISPUTED FACTS

A. THE DISSOLUTION

The first misconception is that the petitioner and respondent were married in California. Petitioner and respondent were married in the State of Nevada.

On December 22, 1994, the respondent (Dorothy) did not file for dissolution of the marriage.

The respondent has totally misleading this court to the stipulation for the worker's compensation checks. The check were take from the United States mail and kept hidden from all other parties. Respondent's attorney allegedly started talking to petitioner attorney trying to get control of his sole and separate property taken for the US mail. Petitioner attorney then accused him of hiding the funds from him. Petitioner (Mr. Tittle) informed him that he has not received one red cent from said workers' compensation case. Then about ten days later, petitioner's attorney sent him the checks with a letter from respondent's attorney requesting the checks be signed and turned over to her. Petitioner refused and kept the checks. Then both attorneys entered into a stipulation without the authorization of the petitioner (Mr. Tittle), were all the check numbers was listed. When the petitioner's attorney told him that he was going to jail. Petitioner said, let it happen. All this was in violation of In re marriage of Fisk (1992) 2 Cal.App.4th 1698 , 4 Cal.Rptr.2d 95

The Arkansas Marina was real property located in the State of Arkansas. The State of Arkansas is a common

law jurisdiction and as such, not subject to California Supreme Court rules, Fall v. Eastin, 215 U.S. 1, 2-10, 54 LEd 65, 30 S.Ct. 3 (1906).

The State of Arkansas does give full faith and credit to forergn jurisdictions, 4 Thomas, Thompon on Real Property, Second Edition, Sections 37.16-37.16(b), (David A Thomas, ed. 2004).

After filing the above-dissolution, the respondent moved to the State of Arizona where she enter into real estate contracted to purchase and purchased real property in Arizona. Then contracted to work as a school teacher. During time, respondent paid Arizona state income taxes, Social Security Taxes, and other Taxes.

Also, while in the State of Arizona, she sold her interest in the State of California community real estate. As for the Arkansas real property, respondent (Dorothy) agreed to the hiring of Arkansas real estate broker who prepared an Arkansas real estate contract to sell her interest in the Arkansas Marina. The broker also set the agreed escrow account to which petitioner deposited the deposit of two thousand dollars. While respondent (Dorothy) in

Arizona, she breached the Arkansas real estate property and come back to California to handle the take over in violation of the real estate contract.

The prepared and signed Arkansas real estate contract contained a binding forum-selection clause.

This court has long recognized forum-selection clauses as binding and the person seeking to break the forum-selection clause has the heavy burden of showing that its enforcement would be unreasonable, unfair or unjust, The Bremen v. Zapata Off-Shore Company, 407 U.S. 1, 8-20.

In the respondent's case, there was no showing that the forum-selection clause in the contract she agreed to was unreasonable, unfair, or unjust.

Respondent simply broke the sales agreement, return to California for the sole propose of filing a separate Order To Show Cause in California family law court.

In the handwritten stipulation there was no provision for Arkansas' real estate property conveyance, taxes, ARK Code Ann, Section 26-3-301. Simply stated California family law courts failed to follow Arkansas real property

laws.

In the State of California, family law courts have limited jurisdiction. They do not have jurisdiction to settle breach of contract actions, Sosnick v. Sosnick (1999) 71 Cal.App. 4th 1335, 1339-1340, 84 Cal.Rptr 2d 700.

California appellate courts also cannot confer jurisdiction where courts the California legislature has not spoken. California appellate courts are without jurisdictional authority over real property located in the State of Arkansas.

At best, California have personam jurisdiction. They can force incompetent persons under psyiatric care to sign stipulation and rule them valid. These handwritten stipulations and subsequent orders should not be binding on the State of Arkansas.

On Page 6 and 7 of opposition brief, respondent (Dorothy) rases the issue of lack of unfairness as to the distribution of the marital assets. Respondent contention must be that the ends justify the means.

What is at issue is denial of Procedural Due Process. This means reasonable notice, some form of a hearing and

an opportunity to call witness on his or her behalf, 13 Cal.Jur. 3d constitutional law, section 312-323.

On page 7, of Opposition Brief, respondent Bottorff-Tittle states:

> The state court found the evidence of petitioner's alleged incompetency lacking.

The logical question is did the petitioner receive notice of a hearing. What procedure was used at this hearing. More importantly, did the petitioner have an opportunity to subpoena witnesses on behalf? The answer is simply no.

Does California case law provide for these Constitutional Due Process protection. The answer is yes, In re Marriage of Lloyd (1997) 55 Cal.App. 4th 216, 219-224, 64 Cal.Rptr 2d 37. There is no record because the family law court the civil trial court and the appellate court simply did not follow the procedure set down by the State legislature and other appellate courts.

If the trial court were to require substantial evidence, the petitioner should be allowed to subpoena Dr. Laurence Jackson M.D., petitioner's treating psychiatrist. This

opportunity was never provided by Orange County Superior Court.

On page 8, of the respondent's Opposition Brief, respondent claims "... great legal expense in a civil action ...". but, because of respondent's total lack of California establish Due Process Procedure, petitioner has suffered and continues to suffer an even greater loss, Superior Wheeler Cake Corp. v. Suourt Court 203 Cal. 384, 264 P 488 (1928).

On page 3, the respondent made an extremely misleading statement:

> The Marina was a community asset to be distributed by the court in the dissolution.

Under California law, California has no control over Arkansas real property. A more characterizing of a community asset does not make it so. A proper name for the Marina should be "marital property on common law basis", Mc Donald v. Commissioner, 323 U.S. 44, 56, 89 L.Ed 60, 65 S.Ct. 103 (dissenting opinion Douglas J.). California courts had personam jurisdiction over the parties. But they never had subject matter jurisdiction over the

Marina, Hughes v. Blue Cross of Northern California (1989) 215 Cal.App. 3d 832, 849, 263 Cal.Rptr. 850.

A judgment of a court wholly lacking jurisdiction over the subject matter is void and violates the Due Process Clause of the Fourteenth Amendment, Kulko v. California Superior Court, 436 U.S. 84, 91, 56 LEd 2d 1283, 98 S.Ct. 1690. Kulko involved an interstate custody action.

After the parties obtained their divorce, respondent (Dorothy) returned to the State of California, the wife attempted subject matter jurisdiction in this State, California, Kulko v. California Superior Court, 436 U.S. 84, at 91-92.

THE MISAPPLICATION OF ROOKER-FELDMAN

On page 13, of respondent Dorothy Bottorff-Tittle's Opposition Brief, respondent cites a case to this court to establish the burden of establishing that limited jurisdiction rests with the asserting party, Kokkonen v. Guardian Life Insurance Inc., Co., 511 U.S. 375 at 395. The real problem is, page 395 deals with an appendix To Opinion Of The Court which discusses solid waste transportation.

REASON FOR DENY OPPOSITION BRIEF OF DOROTHY D. BOTTORFF-TITTLE

During the total period of time I been replying to the respondent's Opposition Brief, I have shown a great deal of errors, misquotes, tempt to mislead the readers and trying to cloud the true of the issue or issues at hand. The issues of procedural Due Process Rights and Constitutional claims is the very and important issues here today.

Petitioner must end the chase here of all the misleading statements brought by the respondent and close this reply brief. And ask this court to deny respondent's Opposition Brief.

CONCLUSION

For all the reasons stated above, on the records, in the best interests of all parties and the people, the Petition For Writ of Certiorari be granted

March 15, 2006 Respectfully Submitted

CHARLES J. TITTLE, In Pro Per

(6)

NO. 05-985

IN THE
SUPREME COURT OF THE UNITED STATES

CHARLES J. TITTLE
Petitioner,

v.

DOROTHY D. BOTTORFF-TITTLE, et al
Respondents,

On Petition For ~~Writ Of~~ Certiorari
To The United States Court Of Appeals
For The Ninth Circuit

PETITIONER'S REPLY BRIEF TO RESPONDENT, COUNTY OF ORANGE OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Federal Cases

Federal Statutes / Rules

California Cases

California Statutes / Rules

INTRODUCTION

In the respondent County of Orange introduction, respondent incorrectly states the sole issue or issues in the petitioner's attempt to relitigate the final state decisions.

In a 1983 Civil Rights Complaint it is acceptable pleading practice to attached a copy of the state decision to show damages. Petitioner did attach a copy of the unpublished California Fourth Appellate, Third Division. This is acceptable federal pleading. But, there was no attempt to relitigate these state decisions in federal court.

In respondent introduction, respondent further claims "He is attempting to restrain the Orange County Superior and Ms Bottorff-Tittle from proceeding with certain state court actions". This again is an incorrect statement, petitioner asked for money damages.

While respondents' dismissed motions were pending in federal district court, petitioner submitted the declaration of Mr. Delvin Munshower which indicated that while petitioner's state court trial case was pending and the day before a summary judgment hearing, petitioner participated

in an oral deposition wherein Ms. Bottorff-Tittle's attorney's repeatedly put petitioner's mental state at issue. This oral deposition was never made part of the State Summary Judgment record. Therefore, respondent's attorneys failed to file it with the court or have the petitioner read the deposition report for errors.

District court Judge Carney simply ignored Mr. Munshower's declaration.

STATEMENT OF THE CASE

I Facts

On page 2 of respondent's brief, County of Orange incorrectly infers that petitioner seeks a review and overturn Orange County Superior Court decisions.

Petitioner and Respondent were not married in California. Petitioner and Respondent were married in the State of Nevada.

Petitioner and respondent did purchase real property with other members of respondents' (Dorothy) family in the State of Arkansas. Respondent filed for divorce in the State of California. California courts have no jurisdiction over

Arkansas real property. The State of Arkansas Supreme Court does not recognize division of Arkansas real property from another state. While the respondent lived in the State of Arizona, she entered into a real estate contract based upon Arkansas law. She then breach the Arkansas real estate contract, returned to California, and sought the jurisdiction of California family law courts to take control of the real property in Arkansas. The court suggested that she complete the sell of the real property to petitioner. She and attorney entered into a stipulation with petitioner, then breached that contract. During the hearing, the family law court lacked the authority to rule on breach of contract issues in family court, Sosnick v. Sosnick (1999) 71 Cal.App. 4th 1335, 1339-1340, 84 Cal.Rptr 2d 700. Therefore, respondent's statement of facts is frivolous and incorrect

During this period of time, petitioner was under serious treatment for "server clinical depression". Which respondent tried to take advantage of the petitioner in state court proceedings. These facts were within the full knowledge of the respondent Dorothy Bottorff-Tittle and

her attorneys. Yet, petitioner was not provided with a Procedural Due Process hearing, California Civil Procedure Code, section 372. This denial of Procedural Due Process Rights continues up to and including the present time.

II. ISSUES FOR REVIEW

A. PETITIONER TITTLE'S LACK OF CAPACITY

On page 3 of respondent's Opposition To Petition For Writ of Certiorari, respondent County of Orange and Orange County Superior Court failed to raise petitioner's competency or the lack thereof was not raised before the federal district court (District Judge Carney).

But, on page 6 through 7, of respondent Dorothy Bottorff-Tittle's Opposition To Petition For Writ, she fully develops petitioner's ongoing attempts to get a fair hearing as being stated in all previous documentation per In re Joann E (2002) 104 Cal.App. 4th 347, 357, 128 Cal.Rptr. 2d 189.

As a part of his (Petitioner) opposition to several motions to dismiss, in federal district court, petitioner

submitted the affidavit of Mr. Delvin F. Munshower. This affidavit fully developed events that took part at an oral deposition on the eve of the state court motion for summary judgment. Affidavit may be submitted to support or oppose motions to dismiss pursuant to Federal Rules of Civil Procedure, rule 6(d) and 12(b)(6), Mc Ginnis v. Southeast Anesthetic Associates, 161 F.R.D. 41, 42-44 (W.D.N.C. 1995).

Procedural Due Process is a flexible concept which calls for procedural protections, Matthew v. Eldridge, 424 U.S. 319, 334-335, 47 Led 2d 18 96 S.Ct. 893(1976), and Hamdi v. Rumsfield, 542 U.S. 507, 159 LEd 2d 578, 598-599, 124 S.Ct. 2633(2004).

As the respondent County of Orange and Orange County Superior Court admits this issue was appropriately addressed, but they failed to show where in its unpublished opinion that petitioner's federal Due Process Rights were denied.

In the state appellate unpublished opinion the respondent denied petitioner's competency arguments on equity reasons, Olvera v. Grace, (1942) 19 Cal. 2d 570,

576-578.

This is why the respondent's opposition should fail.

B. PETITIONER'S BE ALLOWED TO AMEND

Respondent infers that the lower court correctly dismissed petitioner's complaint without leave to amend and then uses three cases as follows.

1. Schreiber Distributing Co. v. Serv-Well Furniture Company, Inc., 806 F2d. 1393, 1401 (9th Cir. 1986). This case clearly states the following on page 1401, 1402:

> [11] Schreiber contends the district court erred in dismissing with prejudice the RICO counts without allowing Schreiber leave to amend. We agree.

In the above case on page 1402, conclusion states as follows:

> REVERSED and REMANDED with instructions to the district court to allow Schreiber to amend its complaint.

2. Desaigoudar v. Meyer, Cord, 223 F.3d 1020, 1021 (9th Cir. 2000). This case deals with several amends to their complaint. Therefore, this case has no meaning to the

case at bar.

3. Doe v. United States, 58 F.3d 494, 497 (9th Cir. 1995). Again this case clearly shows that petitioner should be allowed to amend his complaint.

The burden of proof for denying an amendment is beyond doubt that plaintiff can prove no set of facts in support of his claim, Hughes v. Rowe 449 U.S. 5, 10, 66 LEd 2d 1, 101 S.Ct. 42 (1980).

Therefore, the petitioner should have been allowed to amend his complaint at lease once.

C. NINTH CIRCUIT CONSIDERATION

The attorneys admissions to his clients guilt was clearly stated in his answering brief in the Ninth Circuit for the first time. Therefore, it was proper and timely brought.

D. WHY ROOKER-FELDMAN DOCTRINE DOES NOT APPLY.

Respondent's argument is only partly true. Petitioners complaint under 42 USC 1983 challenges a denial of Procedural Due Process under the Fourteenth Amendment in state courts.

In their unpublished Fourth Appellate Court decision there is no mention of denial of procedural due process. The Supreme Court formally recognized that where state courts deny procedural due process, the Rooker-Feldman Doctrine does not apply, Pennzoil Co. v. Texaco Inc., 481 U.S. 1 at 18, and Catz v. Chalker, 142 F.3d 279, 295 (6th Cir. 1998).

On page 6, respondent cites two Ninth Circuit cases, World Church of God v. Mc Nare, 805 F.2d 888 (9th Cir. 1986) and Allah v. Superior Court (Doeve), 871 F.2d 887 (9th Cir. 1988).

Both Mc Nare and Allah were decided prior to Pennzoil and Catz. Pennzoil was decided by this court on 1987.

Three years later Mc Nare and Allah was decided, this court also established a 1983 Civil Rights action when the various states denied United States Citizens Procedural Due Process, Zinermon v. Burch, 494 U.S. 113, 118, 124-127, 108 LEd 2d 100, 110 S.Ct. 975 (1990).

REASON FOR GRANTING REVIEW

The respondent has clearly shown this court in their opposition that there is lots of cases were the Rooker-Feldman Doctrine is being used to try to deny Procedural Due Process Rights under the Fourteenth Amendment to the Constitution. Recently this court excepted Procedural Due Process cases from the Rooker-Feldman Doctrine, Exxon Mobile Corp. v. Saudi Basics Industries Corp. 544 U.S. 280, _____, 161LEd 2d 454, 464, and 467, 125 S.Ct. 1517 (2005). This case (Rooker-Feldman) should be limited in its use or should be overturn in its entirety, so as not to deny any further legal rights of the citizens of the United States or visitors to this country. The case at bar has shown that there is a lot of conflict between the systems of how the Rooker-Feldman Doctrine is being misquoted.

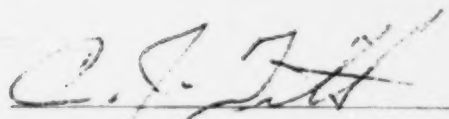
CONCLUSION

For all the reason stated in this reply, the records on file and the original petition. The petition directly effects Procedural Due Process Rights and will helps keep the Constitution in tact for the people by the people. The

Petition For Writ Of Certiorari should be granted.

March 12, 2006

Respectfully Submitted



CHARLES J. TITTLE, In Pro Se

(2)

CASE NO.: 05-985

IN THE SUPREME COURT OF THE UNITED STATES

CHARLES J. TITTLE
Petitioner and Appellant

vs.

Dorothy D. Bottorff-Tittle, et al
Respondents and Appellees

ON WRIT OF CERTIORARI TO THE UNITED STATES OF APPEALS FOR THE 9TH CIRCUIT

PETITION FOR REHEARING

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

CALIFORNIA CASES

FEDERAL STATUES

PETITION FOR REHEARING
(Sup. Ct. R. 44-2)

Appellant / petitioner presents his petition for a rehearing of the above-entitled cause, and, in support of it, respectfully shows:

GROUNDS FOR REHEARING

A rehearing of the decision in the matter is in the best interest of justice and public at large for the following reason:

1. On April 17, 2006, this court denied the petitioner's writ of certiorari.

2. This court summary denied the petitioners' writ of certiorari without any stated opinion. Therefore, this denial left the petitioner to guess at what this court is thinking of the issues of this case.

3. The denial of the writ was a great surprise to the petitioner. Petitioner had fully and completely stated his concerns of the issues of this case. These issues are timely and of great importance to the general public.

4. At the time of the court's denial Petitioner was not aware of several cases pending in the Supreme Court and lower appeal court jurisdictions, the cases of Marshall v. Marshall, 547 U.S. _____ (2006)(decided May 1, 2006), Davani v. Virginia Department of Transportation, et al, 434 F.3d 712 (4th Cir. 2006), Lance et al v. Gigi Dennis, Colorado Secretary of State 546 U.S. ___ (2006), 126 S. Ct. 1198, 163 L.Ed. 2d 1059, Hernandez v. City of Pomona et al, (Cert. For publication copy Apr. 11, 2006, case B182437, Cal. Second Appellate Dis., Div. 7), and Ingram v. Hays, 866 F.2d 368 (11th Cir 1988). The cases listed above are of great importance to this action and they have many similar or related issues. The cases should be allowed to be argued in this court or briefed or used to remand back to lower courts for further litigation.

5. The cases above contain several crucial factual and procedural issues that warrant review by this court, they are as follows:

A. In the case of Bonnie Hernandez, as co-administrator, et al v. City of Pomona et al,(Cert. For publication copy Apr. 11, 2006, case B182437, Cal.

Second Appellate Dis., Div. 7), plaintiff first brought a in the lower federal court on the same set of facts and against the same defendants. Federal court rendered a judgment in favor of the defendants. Therefore, Bonnie Hernandez filed a second negligent action in state court against the City of Pomona, Pomona Police Officers. In state court, the same defendants were found negligent based upon the same set of facts.

California courts disregarded the concept of collateral estoppel.

As it states in note 1 on page 2; 42 U.S. Code, section 1983: Every person who, under color of any statute, ordinance, regulation, custom or usage of any State or Territory or District of Columbia, subject or cause to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any right, privileges or immunities secured by the constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress".

THE DOCTRINE OF RES JUDICATA AND COLLATERAL ESTOPPEL DOES NOT BAR PLAINTIFFS' ACTION IN ANY COURT AGAINST DEFENDANTS NOR THE ROOKER-FELDMAN DOCTRINE.

In the above entitled action, petitioner claimed the defendant's failed to give plaintiff his full constitutional rights, lower courts failed to administer the law governing the State of California, failed to appoint a guardian ad litem and failed to make decisions on all the causes of actions, etc in plaintiff's case. Defendant's ignored plaintiff's procedural due process rights as in the federal Ingram case, these rights were critical. These acts rendered a void judgment. Plaintiff's constitutional rights were never decided in state court and at best, if considered was merely dictum to the decided issues.

Further more, when plaintiff was denied his Procedural Due Process Rights, allowed fraud, theft of his US Mail, defendants cause great harm to plaintiff. Plaintiff should be free from injury to his person, mental and physical health, Agarwal v. Johnson (1979) 25 Cal. 3d 932,

954.

Rooker-Feldman Doctrine nor does res judicata and collateral estoppel bar the plaintiff from filing his complaint in federal court, because he is not claiming that the courts decision itself caused him harm. But plaintiff alleges that the defendants action and failure to give him his legal rights, along with committing tort action against petitioner caused him harm, see page 2, notes 1.

Base upon the decision in this case, the court remanded the case back to lower courts.

B. In the case of Marshall v. Marshall (Cited as 2006 DJDAR 5171, May 2, 2006)(Anna Nicole Smith),

This case has several crustal points which are in the case at bar. This addressed issues like, the Supreme Court has jurisdiction to hear matters arising out of a divorce, when the proceeding have elements of tortious interference claim. Only divorce, alimony and child custody remain outside federal jurisdiction. Therefore, this court has jurisdiction to hear, or make its own motion on the issues at hand, such as tort act, fraud, misleading or misrepresenting the facts to the court of the issues at hand, breach of

contract or contracts, criminal act like the theft of US mail, etc, see page 5172.

As it is pointed out that tortious action in courts like probate, family law can be heard in civil courts and courts of appeals. Especially federal when the lower courts fail to enforce the law(s), fail to litigate a cause of action that violates a party's Constitutional rights, see page 5173.

This case was reversed and remanded.

C. In the case of Davani v. Virginia Department of Transportation, 434 F.3d 712 (4th Cir. 2006), plaintiff filed suit in federal district court for discrimination. The appellee's moved to dismiss on the grounds that federal court lack jurisdiction under the Rooker-Feldman Doctrine.

In the Fourth Circuit decided the Exxon Mobile Corp. v. Saudi Basic. Corp. 544 U.S. 280, 125 S.Ct. 1517, 161 L.Ed. 2d 454 (2005). The court interpretation of the Rooker-Feldman Doctrine only pertain to state court losers who claim that the state court judgment cause the injury itself, not some other tort or denial of their constitutional rights. Therefore, Rooker-Feldman does not bar the plaintiff in this case, because he is seeking to redress the

wrong doing of the appellees, see page 713.

This case also addressed the issue of "inextricably intertwined" with the state judgment. The concluded that plaintiff's federal suit was proper, not inextricably intertwined, because plaintiff sought redress of the defendant's violation of his legal rights and not seeking to challenge the state courts decision, Washington, 407 F.3d at 280.

This case also revised and remand.

D. In the case of Lance v. Dennis, (2006) 163 L.Ed. 2d 1059, 546 U.S. _____, 126 S. Ct. 1198, the case emphasize the narrowness of the Rooker-Feldman Doctrine citing Exxon Mobile 544 U.S. at 287 for dismissal of an action for want of jurisdiction. The Exxon Mobile shows that the lower courts have extended the Rooker-Feldman Doctrine far beyond the narrow doctrine it was originally, see page 1065.

On page 1067, Justices Ginsburg and Souter stated the following in part:

> "... Justice Brennan in 1983 was incorrectly decided and generated a plethora of confusion

and debate ..."

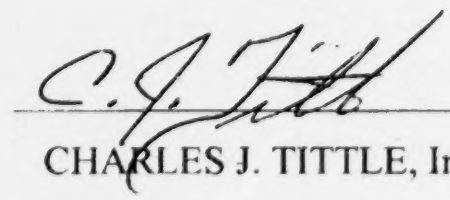
The District Court judgment was vacated and remand for further proceedings.

6. A rehearing review of the cases listed above in this petition should be closely reviewed and compared to the case at bar. They have remarkable similarities to each other for granting a reversal of the lower courts denial or dismissal in this case. A review and granting of a writ of certiorari is a matter of fundamental fairness to petitioner and would not unduly burden the court.

CONCLUSION

For the reason stated above, Petitioner Charles J. Tittle urges that this petition for rehearing be granted, and that, on further consideration, the petition for Certiorari be granted or denial be overturned and this case be set for legal argument in the lower court, also allowing parties to amend their moving papers.

May 12, 2006 Respectfully Submitted

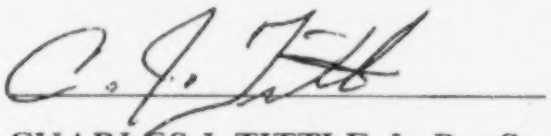


CHARLES J. TITTLE, In Pro Se

CERTIFICATE OF PETITIONER

I, CHARLES J. TITTLE, Petitioner certify that this Petition For Rehearing is presented in good faith and not for delay, and that it is restricted to the grounds specified in Supreme Court Rule 44 of the Rules of this Court.

Dated: May 12, 2006



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